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WORKMEN'S COMPENSATION AND INDUSTRIAL INSURANCE

UNDER MODERN CONDITIONS

The first complete presentation of the subject showing the underlying causes; explaining the effects on both employer and employee; setting forth the methods, procedure and results in actual practice; and including a full text of the statutes in force January 1, 1913, in Germany, England and the several States of America

BY

JAMES HARRINGTON BOYD, A. M., Sc. D. (Princeton)

Chairman of the Ohio Employers' Liability Commission and Member of the Toledo Bar

IN TWO VOLUMES

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which these laws must be founded under our constitutional limitations and finally to give a complete account of the schemes of procedure and administration employed in the practical operation of these laws in our country. If permanency is to be assured legal principles must be based upon sound economic conclusions.

It is both a duty and a pleasure to acknowledge the indebtedness of the author to the various officials and boards charged with the administration of the law in the various states and the officials of the Department of Commerce and Labor, for many courtesies and substantial help in the preparation of this work. These services have been freely rendered and have largely consisted in the careful and painstaking reading of the proof of the chapters relating to their respective jurisdictions, in the tender of the useful sets of forms with which these chapters are enriched, and many valuable suggestions as to the presentation of the subject-matter of the work.

The author likewise acknowledges his indebtedness to the Department of Commerce and Labor for the use he has been able to make of the material assembled by the department in its fourth special report written and edited by the scholarly John Graham Brooks. He is under similar obligations to R. J. Cary for his Brief on the Power of Congress in Respect to Industrial Insurance, and to the writings of Charles R. Henderson on Industrial Insurance.

Space will not permit the citation of a complete bibliography of sources of information. Aside from the footnotes a fairly comprehensive bibliography will be found in the 24th Annual Report of the Department of Commerce and Labor and in Frankel and Dawson's book on Industrial Insurance in Europe.

The subject of Workmen's Compensation and Insurance has largely engrossed the attention of the author for some twenty years, during which time he has spent

two years in Europe where he first familiarized himself with the practical operation of the systems in the countries of their origin. He submits the results of these years of study and labor to students of modern industrial economics and to the bar of this country, which is largely charged with the administration and interpretation of the laws, confident that these pages have vindicated the enactment of these laws, that their scope is better understood and that an adequate administrative procedure—in the light of the present state of the subject—has been developed.

JAMES HARRINGTON BOYD.

Toledo, December 2, 1912.

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THE LAW
OF
COMPENSATION AND INSURANCE
FOR
INJURIES TO WORKMEN

CHAPTER I.

DISTINCTIONS BETWEEN THE COMMON LAW, EMPLOYER'S LIABILITY LAWS, WORKMEN'S INDUSTRIAL INSURANCE LAWS, AND WORKMEN'S COMPENSATION LAWS AS REMEDIES FOR COMPENSATING WORKMEN INJURED IN THE DUE COURSE OF THEIR EMPLOYMENT.

Sec.
1. The common law system of employer's liability prior to the employer's liability and workmen's compensation and insurance laws.
2. The system of employer's liability prior to the workmen's insurance and compensation acts.
3. The distinguishing characteristics of employer's liability laws.
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5. The distinguishing characteristics of workmen's compensation acts.
6. The distinguishing characteristics of workmen's industrial insurance laws.

§ 1. **The common law system of employer's liability, prior to the liability, and compensation and insurance laws.**—Today, at common law, the employer's duty to his employé is to use ordinary and reasonable care for the safety of his employé while he is performing his work. That duty includes:

(a) The duty to provide a reasonably safe place to work.

(b) The duty to provide reasonably safe tools and appliances.

(c) The duty of being reasonably careful in hiring agents and servants fit for work they are to do.

(d) The duty of providing suitable and reasonable rules for carrying on the work.

(e) The duty to warn and instruct youthful and inexperienced servants as to the dangers of the employment.

If a workman be injured by reason of the failure of these duties he may recover from his employer full compensation for his injuries, the amount of damages to be determined by a jury in the usual legal proceedings. Such a right of action is based upon the negligence or fault of the employer. This is the fundamental principle of the present common-law system brought down from the common law of England and which no statute of States or the Federal Government had changed up to the time of the enactment of compensation acts.

The employer has, however, certain defenses to any action brought at common law, as it now exists, by an employé who has been injured in the due course of his employment, and which constitute a special body of so-called judge made law.

(1) THE DEFENSE OF CONTRIBUTORY NEGLIGENCE.

Contributory negligence is the negligence of a servant which is a contributing and proximate cause of his injury, and the burden is generally upon the employé in any action for compensation for injuries received to prove not only the negligence of the employer, but that he himself was exercising ordinary care and was free from negligence, directly contributing to the injury.[1]

[1] The reasons for this rule are thus stated by Judge Thompson: "The rule that contributory negligence bars a recovery is said to be founded on (1) the mutuality of the wrong; (2) the impolicy

The employé injured by his employer's neglect is therefore placed in the same position as a stranger so injured.

(2) THE FELLOW SERVANT RULE.

The fellow servant rule, as announced in the earlier decisions of our Supreme Courts, precludes the recovery by one servant for any injury occasioned by the negligence of another engaged in the same general business, if there had been ordinary care and diligence observed by the master in the selection of servants.[2]

This fellow servant rule is a special rule which applies only to the status of employment and has its origin in a decision by Lord Abinger in the Court of Exchequer in 1837, in the case of Priestly v. Fowler (3 M. & W. 1), and finally settled in England by the House of Lords in 1858 in Barstonhill Coal Co. v. Reid (3 Macq. House of Lords Cases, 266). It was followed in all of the states of the union up to the time of the enactment of employers' liability laws.[3]

The Priestly case, decided by Lord Abinger, was not a case of injury in a hazardous employment such as a factory or a railroad, but a simple case where a butcher's helper was injured by a wagon driver hired by the same employer. The judge regarded it a hardship to hold the butcher liable for the injury which had no real relation to any fault of the butcher, because the helper could have guarded against the injury as well as the butcher. This hardship appealed to Lord Abinger and he decided in favor of the butcher.

Lord Abinger's opinion reads as follows: "It is ad-

of allowing a party to recover for his own wrong; (3) the policy of making personal interests of parties depend on their own prudence and care." 1 Thomp. Neg. (2d ed.), § 168.

[2] Columbus, C. & I. C. R. Co. v. Troesch, 68 Ill. 545.

[3] See also the case of Murray v. South Carolina Ry. Co., McMullan's Law, (S. Car.) 385, where the question was raised in South Carolina in 1837 and decided against the employé.

mitted that there is no precedent for the present action by a servant against a master. We are, therefore, to decide the question upon general principles, and in doing so we are at liberty to look at the consequences of a decision the one way or the other.

"If the master be liable to the servant in this action the principle of that liability will be found to carry up to an alarming extent. He who is responsible by his general duty, or by the terms of his contract for all the consequences of negligence in a matter in which he is the principal, is responsible for the negligence of all his inferior agents. If the owner of the carriage is therefore responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coachmaker, or his harnessmaker or his coachman. The footman, therefore, who rides behind the carriage, may have an action against his master for a defect in the carriage, owing to the negligence of the coachmaker or for a defect in the harness, arising from negligence of the harnessmaker, or for drunkenness, neglect or want of skill in the coachman; nor is there any reason why that principle should not, if applicable in this class of events, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid, for putting him into a damp bed; for that of the upholsterer for sending him a crazy bedstead; whereby he was made to fall down while asleep and injured himself; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen; of the butcher, in supplying the family with meat of a quality injurious to the health; of a builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins.

"The inconvenience, not to say the absurdity, of these consequences affords sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant

never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide for the safety of his servant, in the course of his employment, to the best of his judgment, information and belief. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases in which danger may be incurred, if not all, he is just as likely to be acquainted with the probability and extent of it as the master."[4]

3. THE DEFENSE OF ASSUMPTION OF RISK.

The so-called "assumption of risk rule" is closely related to the fellow servant rule, the former rule really embracing the latter. Under this principle every risk which an employment involves after a master has done everything that he is bound to do for the purpose of securing the safety of his servants (including the employment of other servants) is assumed, as a matter of law, by each of those servants. The risks which are thus considered to have been assumed, are those which are commonly described as "ordinary." It is the settled doctrine of the law that the servant may reasonably be presumed to foresee that he will be exposed to the ordinary risks of the business in which he engages, although it may involve unusual or extraordinary hazards.

The courts are wont to say that there is an "assumption of the risk," or an "implied contract," however, in the average case and that is merely a formula of words which the rule of the law happens to take. Even in dangerous employments there is usually no contract between the employer and the workman concerning the

[4] Priestley v. Fowler, 3 M. & W. 1.

risk. Hazard of an employment does not fix the price of wages, they are fixed by competition.

The common law system of employers' liability has been developed along the same lines in the United States and Great Britain, during the period in which modern manufacturing with its factory system was replacing hand labor. It has been well said that "the development has been profoundly influenced by the belief of the courts that the necessity of profit in industrial enterprises demanded protection even at the expense of damage to certain industries."[4a]

§ 2. The system of employer's liability prior to the insurance and compensation acts.—The system of liability of employers in the States of the United States and the United States, speaking generally, is founded upon fault. That is, an employé who is injured while employed can only recover damages from his employer when the jury finds that the employer was negligent and that his negligence caused the accident. Even then the employé may not recover in case he was negligent and his negligence contributed to the cause of the injury, or the negligence of a fellow workman caused the injury, or he assumed that risk while working.

For injury due to the inherent hazards of the employment and accidents due to an act of God or for which the blame can not be fixed, the employer is not liable.

These fundamental principles of the common law were accepted and enforced by all the courts of this country until the enactment of Workmen's Insurance and Compensation Laws by Montana, New York, Washington, Ohio, Wisconsin, Massachusetts, New Jersey,

[4a] See Report of the Employer's Liability Commission of Ohio, Part I, p. XVIII.

Illinois, Kansas, California, Michigan, Nevada, New Hampshire, Rhode Island, Maryland, Arizona and the Federal Government.

Prior to the enactment of Workmen's Insurance and Compensation Acts, the legal relation of the employer and his employés in the States and the United States were governed by the common law as modified by statutory liability laws.

Although there have been enacted,—chiefly during the last ten years,—Employer's Liability Laws by the United States and many of the States, they have not essentially changed the fundamental principles of the common law in this respect. The legal relation of employer and employé at common law in both England and United States prior to 1837 in no way differed from that of a stranger and there were no special rules respecting employers' liability. If A was injured on account of B's neglect and not by his own fault, B was bound to compensate A whether A was an employé or not. Since 1837 the Courts have made special rules respecting the liability for accidents in employment. The reason which the courts have assigned for this special body of judge made law is that they are exercising their duty in interpreting the contract of employment. It is to be noted that this body of purely judge made law was in process of making for about seventy years before compensation acts of any kind were passed in the States of the United States, or by the Federal government.

§ 3. The distinguishing characteristics of employer's liability laws.—It should be noted, that for two hundred and fifty years after the Magna Charta was adopted, it was the law of England that one was liable to those injured by his acts or by the acts of persons or things for which he was responsible whether the cause of the injury was attributable to the fault of the defendant or not. The first suggestion that

freedom from fault might excuse in such a case was made in 1466, but this rule did not become fully settled in England until 1891. In America there were decisions to this effect from 1820 and after, the most important decisions having been made between 1830 and 1850.[5]

In a later chapter on The Economic Basis of Workmen's Insurance and Compensation Acts,[6] it is shown that an injured workman does not on the old idea of fault have a cause of action, in theory, against his employer, in to exceed eighteen per cent of all the cases, taken collectively, and in practice this per cent falls below twelve per cent. Impressed by this hardship upon injured workmen and their dependents, congress and the legislatures of some thirty of the States of the United States have enacted, within the last ten years, a number of employer's liability acts which have largely abrogated the common law defenses, set out in the preceding section.

The following States have by statute abrogated the defense of fellow servant either by general statute or in particular industries (usually railroads): Arkansas, Colorado, Florida, Georgia (since 1855), Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin.[6a] The Colorado statute is the most striking example of this class since it completely eliminates the defense of fellow servant in every employment.[7]

[5] See "The New York Workmen's Compensation Act Decision" by Dean James Parker Hall, in The Journal of Political Economy, Vol. XLV, No. 8, October, 1911, p. 698.

[6] Chapter V.

[6a] The best available summary of the laws of the other states appears in the Bulletin of the United States Bureau of Labor, No. 74 of January, 1908.

[7] This statute has been upheld as constitutional in Vindicator, Min. Co. v. Firstbrook, 36 Colo. 498.

In the following States the defense of fellow servant is modified without being abrogated: California, Mississippi, Maryland, Ohio, Oregon, South Carolina, Utah, Virginia.

In some or all of the States named, modifications of the common law have been adopted along the following lines (by statutes or by decision as to the common law):

(1) Adopting the doctrine of comparative negligence which allows a recovery notwithstanding contributory negligence, provided it is less in degree than the negligence of the master.

(2) Changing the burden of proof of contributory negligence, from the plaintiff to the defendant, which has always been the rule in the Federal Courts and some States.

(3) Taking away the defense of the assumption of risks when the risk assumed was caused by the fault or negligence of the employer.

§ 4. The modern conception of employer's liability.—The old methods of manufacture, and even many of the old industries, have become obsolete and have been superseded by rapid, complicated and hazardous methods growing out of improvements directed towards the cheapening of products, and the ancient relation of employer and employé, under which the employé generally worked beneath the eyes of the employer, has ceased to exist.

In modern times the employer has little personally to do with the employé, and necessarily their mutual personal interest is no longer the same.

Notwithstanding the great changes in the character of the employment and in the hazards, there has been for years practically no change in the law governing the relation; so that thoughtful persons are almost unanimously of the opinion that the law now governing em-

ployer and employé, with respect to injuries done to the latter, in hazardous industrial occupations, is unjust to both employer and employé and a source of unfair oppression to the employer and a cause of unmerited hardship to the employé.

Many suggestions have been made as to a remedy, but commissions on Employer's Liability are strongly of the opinion that the industry itself should bear the burden and not the employé. The industry now bears the burden of the wearing out and destruction of machinery necessarily resulting from its use, and civilization now demands that the industry bear also the burden of the wearing out and destruction of the efficiency of the human machines without which the industry could not survive. In bringing this about, radical changes in the law governing employer and employé must be made. When a man's life is lost, or his efficiency decreased through injury in his employment, humanity demands that his dependents in case of his death, and he himself in case of injury, shall be cared for. This care must be given either by the community at large, or by the industry in which he was engaged when injured.

We have not progressed so far in this country that the State will care for everybody except for charity's sake; but as the injured employé must be cared for, and as the ancient legal fiction of assumption of the risk in the dangerous employment of modern industry is unjust to the employé, it seems fitting that some device spreading this burden throughout the whole industry shall be created, and the employer protected from oppression by law suits and prolonged litigation, and the employer relieved from the necessity of seeking redress in the courts for loss of ability to earn a livelihood, of which he has been deprived by accident. Nor is this in any sense charity, but only simple justice.

A change in the law should insure to the employé

quick, practically immediate relief by way of support and medical attendance, coupled with an assurance of future support.

Some objection might be made to imposing this obligation upon the industry, upon the ground that the employé should bear his share of the burden, in view of the fact that such a scheme is practically in the nature of accident insurance; but it seems more feasible to impose the whole burden upon industry because, like all the other losses growing out of depreciation in machinery and in the plant and other expenses, this added charge will be taken care of in the prices obtained by the employer for the products of the industry.[8]

§ 5. The distinguishing characteristics of workmen's compensation acts.—During the years 1910, 1911, 1912, there have been passed Workmen's Compensation Acts in eleven states of the United States and by the United States government as follows:

The New York Law enacted in session of 1910 and held unconstitutional March 24, 1911;

The New Jersey Law approved April 4, 1911, and took effect July 4, 1911;

The Wisconsin Law passed session of 1911 and became operative September 1, 1911;

The California Law enacted session of 1911 and became operative September 1, 1911;

The Kansas Law enacted by the session of 1911 and took effect January 1, 1912;

The Illinois Law passed at the session of 1911 and became operative May 1, 1912;

The Michigan Law passed at the session of 1912 and took effect September 1, 1912;

The Arizona Act took effect September 1, 1912.

[8] Report of Employer's Liability Commission of Ohio, Part I, p. XV.

The Nevada Law passed at session of 1911 and became operative July 1, 1911;

The New Hampshire Law approved April 15, 1911, and took effect January 1, 1912;

The Rhode Island and Providence Plantation Law approved April 29, 1912, and took effect October 1, 1912, and

The Federal Compensation Acts of May 30, 1908; March 4, 1911; March 11, 1912, to provide compensation to injured government employés on and after August 1, 1908.

The employer is personally liable for the compensations to be paid an injured worker under both systems, Employers' Liability Laws and Workmen's Compensation Acts. In the case of Compensation Acts, however, the only negligence recognized on the part of either the employer or employé, speaking generally, is that of wilful negligence. Where the employer is guilty of this form of negligence, he is penalized; where the wilful negligence is that of the employé, he is denied his compensation or is penalized or has his compensation reduced. In compensation acts the amount of the compensation is determined within a maximum and minimum limit by specified schedules of compensation fixed in the law and are graded on a basis of a certain percentage of the loss or impairment of the injured worker's average weekly wage. Jury trials are either largely or wholly eliminated, and the compensation to which the injured worker is entitled under the act is determined by a board of arbitration, a judge of some court or a board of awards created or specified by the act.

§ 6. The distinguishing characteristics of workmen's industrial insurance laws.—Workmen's Industrial Insurance Acts have been passed in five States as follows:

The Ohio Act enacted in May, 1911, and became operative January 1, 1912;

The Washington Act was passed March, 1911, and became operative October 1, 1911:

The Massachusetts Law approved July 28, 1911, and took effect July 1, 1912; and

The Montana Mining Law approved March 4, 1909, and declared unconstitutional by the Supreme Court of Montana, November, 1911.

The Maryland Act became operative April 15, 1912.

The enactment of Compensation Acts and Workmen's Industrial Insurance Laws, in particular, introduce remedies for the compensation of injured workmen, which on principle are new to the jurisprudence of the United States.

There are fundamental differences between the principles of Workmen's Industrial Insurance and those of Employer's Liability Laws or Compensation Acts of the type of the English, New York or Wisconsin Acts. The injured workman's claim under a state insurance act is against a fund which is created by contributions paid by employers, employés and the State or by any of them, in the form of an insurance premium which is collected by the taxing power of the State through the exercise of its police power. The employer's liability to his employés on account of personal injuries occurring in the due course of their employment, is discharged when he has paid the premiums provided by the act. The right of trial by jury is entirely eliminated in such cases, excepting the case where the employé is denied compensation of any kind and in that case he may sue the board of administration created by the act and have his case tried before a jury as heretofore but can not sue his employer. No negligence of any kind is recognized either on the part of the employer or employé, speaking generally, excepting the wilful negligence on the part of either. In case the employer caused the accident by wilful act or

by disregarding Factory Inspection acts and orders, he is subjected to some kind of penalty, and in case the injured worker wilfully caused the accident for the purpose of obtaining compensation, he is denied any compensation or has it reduced or is penalized. The compensation is paid in installments and based upon a certain percentage,—usually 50 to 60 per cent.—of the impairment of wages caused by the accident. The act usually fixes the length of time that such compensation may run and also a maximum and minimum total compensation. In the enactment of these statutes the State exercises its police power for the protection of the peace, safety and general welfare of the public.[9]

The primary object of industrial insurance for workmen is to provide a reasonable compensation which shall be paid without fail and at a minimum cost of administration, to the injured worker and his dependents, at stated intervals, so that his dependents shall not, in case they are minors, suffer in attaining a normal development which is necessary for self-support, and in order that neither the injured workman or his dependents shall become public charges, by reason of bodily injuries which the worker received in the due course of his employment.

From the standpoint of the public, the effect of a serious bodily injury received by such a workman, is the same whether the cause of the injury is attributable to the negligence of the employer or to that of his employé, or that of a fellow-workman, or is caused by an act of God. It is assumed that the case is very rare that either the employer or his employé will wilfully cause an injury covered by such a law.

[9] For full discussion of Insurance acts see Chapters IV, VII, X, XI, XVII.

CHAPTER II.

HISTORICAL SKETCH OF DEVELOPMENT OF WORKMEN'S INDUSTRIAL INSURANCE AND WORKMEN'S COMPENSATION LAWS IN THE UNITED STATES.

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8. Previous investigation of the problem.
9. The Chicago conference of employer's liability and workmen's compensation commissions.
10. Subjects discussed.
11. Conclusions of the Chicago conference.
12. The work of the State commissions.
13. Executive recommendations.
14. The Federal employer's liability and workmen's compensation commission.

§ 7. Inception of movement for these laws.—The movement for the enactment of more just and humane laws to take the place of the outgrown common-law remedy for the compensation of workmen for injuries received in the course of their employment became widespread in the United States about the beginning of this century. The movement received its first legislative recognition in New York when the Legislature of that state passed an act[1] which authorized the appointment of a commission "to inquire into the working of a law in the State of New York relative to the liability of employers to employés for industrial accidents and into the comparative efficiency, cost, justice, merit and defects of the laws in other states and countries relative to the same subject and as to causes of accidents to employés."

Pursuant to the statute a commission of fourteen members was appointed in May, 1909, three from the Senate, five from the Assembly and six from industrial and professional walks of life, all of whom were eminent-

[1] Laws 1909, ch. 518.

ly qualified for the work to be done. This commission made its report to the legislature in March, 1910, and the bills reported by the commissioner were virtually adopted by the legislature with but few dissenting votes, there being only four dissenting votes in the House against it. The bill is in the form of a compulsory workmen's compensation law affecting eight classes of hazardous employments. A copy of the law and the opinion of the Court of Appeals holding the act unconstitutional are given in a later chapter.[2] The conclusions of the report of the New York commission respecting the important economic and sociological principles of law involved in their investigations are fully set forth in this opinion.

§ 8. Previous investigation of the problem.—Every civilized nation in Europe and many other nations in other parts of the world except the United States have discarded the old system of Employer's Liability based upon fault and substituted a system under which every industry bears the burden of relieving the distress caused by injuries to workers in any given industry practically without litigation. The German system of insuring the workers in all of its industries against sickness, accidents and old age, was inaugurated during the period from 1883 to 1887, a full discussion of which will be found in a later chapter.[3]

Great Britain enacted her Compensation Act in 1897 and the same was amended and broadened in its scope in 1900, 1906 and supplemented in March, 1912 by David Lloyd-George's Insurance Law against sickness, old-age and out-of-work.[3a] The prime mover in the adoption of the German system was Prince Bismarck. In

[2] See Chapter VI.

[3] See Chapter IV.

[3a] National Insurance Act, 1911, 1, 2 Geo. 5, ch. 55.

England these laws were ably championed by Lord Salisbury and Mr. Chamberlin.

The subject first attracted the attention of legislative agents in the United States in 1893 when the investigation of the German system by John Graham Brooks was published in The Fourth Special Report of the Commissioner of Labor of the United States, Carroll D. Wright. In 1898 William Franklin Willoughby published a careful study of foreign industrial insurance, and in 1900 the report of the Commissioner of Labor of New York[4] contained an intelligent study and report upon the experience of European nations with this kind of insurance and compensation for injured workers. The Commission which was appointed to investigate the subject in Massachusetts in 1904, recommended the adoption of a plan modeled after the English Compensation Act of 1897, but the bill reported by the commission was not passed. A commission in Illinois recommended a workmen's compensation law of a similar nature in 1907. This bill in like manner failed of passage. A commission was appointed in Connecticut in 1908 to investigate the same subject but it was unable to reach any definite conclusions.

During the year 1910 congress and the legislatures of Massachusetts, Minnesota, New Jersey, Connecticut, Ohio, Illinois, Wisconsin, Montana, and Washington authorized the creation of commissions to investigate employers liability laws and the various plans for the compensation of injured workmen, with the result that commissions were appointed in all of these states and by July, 1911, were engaged in their investigations.

§ 9. The Chicago conference of employer's liability and workmen's compensation commissions.—In 1910

[4] Senate Documents, 123d Session, 1900, Vol. 10, Part II, written by Adna F. Weber.

there was held in Chicago a Conference of Commissioners on Compensation for Industrial Accidents from United States government, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New York, Ohio, Washington, Wisconsin, Connecticut and the committee on Uniform State Laws and United States Bureau of Labor. This conference met November 10, 1910, and remained in session for three days. Its officers were H. V. Mercer, of Minneapolis, chairman, and Amos T. Sanders, Clinton, Mass., secretary. The various commissions and their membership were as follows:

United States Employers' Liability Commission:

William Warner, U. S. S., Chairman; Charles J. Hughes, Jr., U. S. S.; William G. Brantley, M. C.; Edwin Denby, M. C.; W. C. Brown, President N. Y. Central R. R.; D. L. Cease, Editor The Railroad Trainman; Launcelot Packer, Secretary.

Illinois Employers' Liability Commission, 317 Fisher Building, Chicago, Ill.:

Charles Piez, Chairman; *Edwin R. Wright, Secretary; Samuel A. Harper, Attorney; Mason B. Starring; *E. T. Bent; M. J. Boyle; Patrick Carr; John Flora; *George Golden; R. E. Conway, East St. Louis, Ill.; Daniel J. Gorman, Peoria, Ill.; P. A. Peterson, Rockford, Ill.

Massachusetts Commission on Compensation for Industrial Accidents, State House, Boston, Mass.:

*James A. Lowell, Chairman, Boston; *Amos T. Saunders, Secretary, Clinton; *Magnus W. Alexander, Boston; *Henry Howard, Boston; *Joseph A. Parks, Fall River; *Carroll W. Doten, Chief Investigator, Boston.

Minnesota Employés' Compensation Commission:

*H. V. Mercer, Minneapolis, Minn.; *Geo. M. Gillette, Minneapolis, Minn.; *W. E. McEwen, St. Paul, Minn.

Employers' Liability Commission of Montana:
*Judge W. L. Holloway, Chairman, Helena, Mont.; Neill Collins, Anaconda, Mont.; J. C. Loweny, Butte, Mont.; J. H. Hall, Helena, Mont.; H. G. Miller, Kalispell, Mont.; C. W. Goodale, Butte, Mont.; J. E. McNally, Butte, Mont.; W. F. Meyer, Deer Lodge, Mont.

New Jersey Employers' Liability Commission:
*Wm. B. Dickson, President, New York, N. Y.; J. William Clark, Newark, N. J.; John T. Cosgrove, Elizabeth, N. J.; Samuel Botterill, East Orange, N. J.; Walter E. Edge, Atlantic City, N. J.; Edw. K. Mills, Morristown, N. J.; *Dr. Albert A. Snowden, Secretary, Roselle Park, N. J.

New York Commission on Employers' Liability, Etc., Metropolitan Life Building, New York:
*J. Mayhew Wainwright, Chairman; Henry R. Seager, Vice-Chairman; Frank C. Platt; Howard R. Bayne; Alfred D. Lowe; George A. Voss; Frank B. Thorn; Cyrus W. Phillips; Edward D. Jackson; George W. Smith; Philip Titus; Otto M. Eidlitz; John Mitchell; Joseph P. Cotton, Jr., Counsel; Crystal Eastman, Secretary.

Employers' Liability Commission of Ohio:
*James Harrington Boyd, Chairman, Toledo, Ohio; J. W. Perks, Springfield, Ohio; *W. J. Rohr, Cincinnati, Ohio; *W. J. Winans, Galion, Ohio; *J. P. Smith, Cleveland, Ohio.

Commission on Compensation for Industrial Accidents of Washington:
Harold Preston, Counsel, Seattle, Wash.; Paul E. Page, E. S. Jones, J. A. Falconer, Clarence Parker, Jas. Anderson, George Von Eschen, F. B. Hubbard, Peter Henretty, J. H. Wallace.

Wisconsin Industrial Insurance Committee:
*A. W. Sanborn, Chairman, Ashland, Wis.; E. T.

Fairchild, Milwaukee, Wis.; John J. Blaine, Boscobel, Wis.; Wallace Ingalls, Racine, Wis.; C. B. Culbertson, Stanley, Wis.; Walter D. Egan, Superior, Wis.; George G. Brew, West Milwaukee, Wis.; *Paul J. Watrous, Secretary.

Connecticut Special Delegate:

*Walter S. Schutz, Hartford, Conn.

Special Committee on Uniform Laws to Prepare a Uniform Workmen's Compensation Law:

*Hollis R. Bailey, Chairman, 19 Congress Street, Boston; Charles Thaddeus Terry, Secretary, 100 Broadway, New York; *Aldis B. Browne, 1419 F Street, N. W., Washington, D. C.; John R. Hardin, Prudential Building, Newark, N. J.; Peter W. Meldrim, 15 Bay Street, West, Savannah, Ga.; George Whitelock, 1407 Continental Trust Building, Baltimore, Md.; *John H. Wigmore, Dean, Northwestern University School of Law, Northwestern University Building, Chicago, Ill.

United States Bureau of Labor:

*Charles P. Neill, Commissioner of Labor, Washington, D. C.; *L. W. Chaney.[4a]

§ 10. Subjects discussed.—The work of this conference covered seven sessions during which were discussed the following fourteen propositions relating to workmen's compensation:

1. What employments shall the act cover?

2. Shall all injuries be covered, irrespective of negligence?

3. Shall all persons engaged in such employments be included?

4. Shall compensation be paid in a lump sum or in installments?

5. Amount and duration of compensation?

[4a] The starred (*) members were present at Conference.

6. Length of waiting period?

7. Shall dependents include aliens and illegitimate relations?

8. Shall employés contribute?

9. Shall it be permissible for employers to substitute voluntary schemes?

10. Method of determination of controversies?

11. Nature of scheme: Compensation, insurance, or State insurance, (a) Voluntary, (b) Compulsory?

12. Repeal of other laws?

13. Constitutionality?[5]

§ 11. Conclusions of the Chicago conference.—The conclusions of this conference were drafted into a law, the fundamental provisions of which may be briefly stated as follows: The act provides a compulsory and exclusive remedy, with a waiting period of two weeks during which time the injured workman may be allowed compensation by way of medical attendance and hospital bills and funeral expenses not to exceed $100.00; it covers all hazardous employments and the compensation to be paid to injured workers or dependents is based upon 50% of the loss of wages caused by the injury without regard to fault or negligence excepting malicious negligence, payments to be made monthly and to continue so long as the disability lasts, not to exceed three hundred weeks, and lump sum payments to be made at the discretion of the Board of Advisors; the compensation in any case not to be more than $10.00 per week and in case of death or total disability not less than $5.00 per week; in case of death the compensation to dependents shall continue not longer than three hun-

[5] See page 29 of Proceedings of Commissions on Compensation for Industrial Accidents, Chicago, Nov. 10, 12, 1910, published by Amos T. Saunders, Secretary, Clinton, Massachusetts, 1910.

dred weeks and in case of total disability so long as total disability lasts not to exceed 300 weeks.[6]

§ 12. The work of the State commissions.—Since the Chicago Conference of Commissions and during the year 1911 and the first six months of 1912 the legislatures of the states of Ohio, Washington and Massachusetts have enacted Workmen's Industrial Insurance Laws and New Hampshire, New Jersey, Illinois, Michigan, Wisconsin, Kansas, Nevada, Rhode Island and California have enacted Workmen's Compensation Acts. During the spring of 1909 the Montana legislature enacted an Insurance Compensation law affecting the employés of mines only. Similar commissions are now at work on the recommendation of compensation acts in other states and are required to report to their respective legislatures.

§ 13. Executive recommendations.—Since 1908, the subject of workmen's compensation has received frequent consideration from Congress with respect to the employés of employers who are engaged in interstate commerce and in the government service. President Roosevelt on January 31, 1908, sent a message to the Congress in which he advocated the passage of such laws to bring relief to injured workers in such employments and indicated at the same time the duty of the legislatures of the several States in this respect. In that message the President said, "I also very urgently advise that a comprehensive act be passed providing for compensation by the government to all employés injured in the government service" * * * and further, "The same broad principle which should apply to the government should ultimately be made applicable to all private employers. Where the nation has the power it should enact the laws to this effect. Where the States alone have

[6] See Proceedings Chicago Conference cited above.

the power they should enact the laws"[7] * * * Governor Hughes, of New York in his 1909 annual message advocated the enactment of like legislation for the protection of injured employés.

§ 14. The Federal employers' liability and workmen's compensation commission.[7a]—This Commission authorized and created pursuant to a joint resolution[8] of Congress, conducted extensive investigations during the year 1910 and 1911 and inquired into the economic conditions affecting employés of railroads engaged in interstate commerce only. The commission conducted hearings in Washington and Chicago and made their report to Congress in December, 1911, and recommended a workmen's compensation law obligatory and exclusive in nature affecting the employés of railroads engaged in interstate commerce only.[9]

[7] The Federal Workmen's Compensation Act affecting employés of the Government service, was passed by Congress and approved by President Roosevelt, May 30th, 1908.

[7a] See Chapter XXII.

[8] Approved June 25, 1910.

[9] See message of the President, transmitting the report of the Employer's Liability and Workmen's Compensation Commission, Senate Document No. 338, 62d Congress, 2d Session.

CHAPTER III.

BRIEF HISTORICAL REVIEW OF THE GERMAN PLAN OF INSURANCE OF WORKMEN AGAINST ACCIDENTS, THE BRITISH COMPENSATION ACT, AND THE OPERATION OF THE SYSTEMS OF EMPLOYERS' LABILITY IN GREAT BRITAIN AND THE UNITED STATES.

Sec.
15. Chronological development of the subject.
16. The insurance message of Emperor William I.
17. German industrial insurance acts.
18. British compensation legislation.
19. Some characteristics of German insurance legislation.

§ 15. **Chronological development of the subject.**—Frederick the Great claimed to be especially the king of the poor, and also claimed the right to use the state in any way he saw fit for their protection and uplifting. The Prussian law of a century ago acknowledged the famous right to work and to a living. The state, in its very nature, is the guardian of the weaker classes. In the common law of that time it is stated:

"It is the duty of the state to provide sustenance and support of those of its citizens who cannot provide sustenance for themselves. Work adapted to their strength and capacities shall be supplied to those who lack means and opportunities of earning a livelihood for themselves and those dependent upon them.

"Those who from laziness, love of idleness, or other irregular proclivities, do not choose to employ the means offered them of earning a livelihood, shall be kept to useful work by compulsion and punishment under proper control.

"The State is entitled and is bound to take such measures as will prevent the destitution of its citizens and check excessive extravagance.

"The police authorities of every place must provide for all poor and destitute persons whose subsistence cannot be insured in any other way."[1]

In this connection it is to be noted that prior to 1837 the principles of the common law of negligence or fault formed the only basis of recovery by a workman from his employer, on account of an accident to him.

In that year Priestly v. Fowler,[2] was decided, establishing the fellow servant rule, which relieves the master from liability for an injury received by a servant in the course of his employment, the cause of which was due to the negligence of a fellow servant engaged in the same employment.

Prussia, on November 3, 1838, took the initial step in recognizing the new principle of the liability of employers to provide compensation for industrial accidents. It was applicable to railroads only, but the act made the companies liable for accidents to passengers as well. The companies had only the defenses that the negligence of the person injured and an act of God was the cause of the accident.

Only four years later Judge Shaw, of Massachusetts,[3] laid down the doctrine of assumed risks.

In 1854 statutes were passed in Prussia compelling certain classes of employers to contribute one-half of the subscriptions to the fund of the sick associations formed according to local statutes.

It was also required that independent mechanics and manufacturers advance the contributions of their journeymen and assistants, with the proviso of charging it to the next payment of wages. As compensation for their share in the payment, the employer was assured a

[1] Fourth Special Report of the Commission of Labor of the United States, 1893, page 26.

[2] 3 M. & W. 1.

[3] Farwell v. Boston, etc., R. Co., 4 Met. (Mass.) 49.

corresponding influence over the administration of the fund.

Several German States, as Brunswick, Mecklenburg and Saxony, went even further than Prussia in demanding that all employers should belong to some kind of mutual sick association.[4]

The act of June 21, 1869, for the North German Confederacy had the effect of releasing the bond of compulsory contributions to the sick fund by employers provided by the act of 1854.

In 1876 there were in all Prussia 5,239 compulsory societies, with 869,204 members. In 1880 the Prussian official statistics showed 839,602 members, belonging to registered friendly societies, 220,000 to the miners' societies, and 200,000 to non-registered friendly societies, in all, 1,259,602, at most out of 2,400,000 of those employed in mines and all industries which came within the law. Though there was still everywhere possibility of local compulsion, the act of 1876 relating to friendly and active societies had made it so little effective as to leave these scant results. One-half of those for whom the societies (Sickness, Relief and Burial) were meant were still uninsured. "The only good result of the act of 1876 was to make it wholly clear to all who cared to know the facts, that the most dependent class could only be reached by the strong hand of the state."[5]

Two years before the passing of the first insurance law—that of sickness,—it was said by Bismarck, in explaining the first draft of the accident bill, "It is the duty of humanity and Christianity, for the state to interest itself to a great degree in those of its members who need help. It is the duty of the state to cultivate beneficent institutions; this will be no novelty but a further solu-

[4] Fourth Special Report of the Commission of Labor of United States, 1893, p. 35.

[5] Fourth Special Report, p. 36.

tion of the modern idea of the state, a result of Christian morality; in accordance with such, the state should not merely discharge the duties of self-defense, but those also of a positive character in promoting the welfare of all its members, and especially of the weak and needy."[6]

In 1871 Germany enacted the famous employers' liability act, through which mine owners were made liable for death or accident that could be proved in any way, directly or indirectly, the fault of the owner. This law excludes the two defenses, assumption of the risk and fellow servant rules. Endless bitterness was not only caused by the workings of this law but extreme delays occurred in the settlement of cases, and the dissatisfaction here was only a part of that which showed itself throughout most of Germany.[7]

The excuse given for the failure of the voluntary insurance act of 1876 was "Singly we are too weak to carry out this insurance. It costs so much time and money, so that our competitors who do not insure, get an instant advantage over us who do not object to the extra burden if all of our rivals are compelled to bear it also."[8]

§ 16. The insurance message of Emperor William I.—Emperor William I came to Bismarck's support and gave his famous message on November 17, 1881, to the Reichstag. This message is called "The monument of the New Social Era." The Emperor said:

"We consider it our Imperial duty to impress upon the Reichstag the necessity of furthering the welfare of the working people. We should review with in-

[6] Die Reden von Fuerst Von Bismarck im Preussischen Landtage und in Deutschen Reichstag 1881-1883 besorgt Horst Kohl, Neunter Band (1893), Seite 9.

[7] Fourth Special Report, p. 43.

[8] Fourth Special Report, p. 46.

creased satisfaction the manifold successes, with which the Lord has blessed our Reign, could we carry with us to the grave the consciousness of having given our country an additional and lasting assurance of internal peace, and the conviction that we have rendered the needy that assistance to which they are justly entitled.

"Our efforts in this direction are certain of the approval of all the federated governments, and we confidently rely on the support of the Reichstag, without distinction of parties. In order to realize these views a bill for the insurance of workmen against industrial accidents will first of all be laid before you, after which a supplementary measure will be submitted providing for a general organization of industrial sick relief insurance.

"But likewise those who are disabled in consequence of old age and invalidity possess a well founded claim to a more ample relief on the part of the State than they have hitherto enjoyed. To devise the fittest ways and means for making such provisions, however difficult, is one of the highest obligations of every community based on the moral foundations of Christianity. A more intimate connection with the actual capability of the people, and a mode of turning these to account, incorporated societies, under the patronage and with the aid of the State, will, we trust, develop a scheme to solve which the State alone would be unequal."[8a]

§ 17. German Industrial Insurance Acts.—The end sought by these reformers was that a workingman, unfitted for work by sickness, accident, invalidity or old age, should have a legal right to due and just provision, in order not to be compelled to rely upon public charity. This could only be attained by a system of general and compulsory insurance, based on mutuality

[8a] Dr. George Zacher's Guide to Workmen's Insurance of the German Empire, pp. 1, 2.

and self-administration.[9] After 50 sittings the bill for sick insurance passed on May 31, 1883, with a majority of 117 votes. It did not include, at first, employés engaged in agriculture but it was contemplated, ultimately to include practically all employments.

Afterwards the following accident insurance laws were passed:

(1) The so-called fundamental law of July 6, 1884, for Industry, Transport Trades, Telegraph, the Army and Navy.

(2) The "Agricultural Law" of May 5, 1886, for Agriculture and Forestry.

(3) The "Building Law," July 11, 1887, for Building Trades so far not insured.

(4) The "Marine Law," July 13, 1887, for Navigation.

§ 18. British compensation legislation.—In England the first employers' liability act was passed in 1880. The most important provision of this law was the extension of the principle of the vice principal, but the relief appears to have been slight and unsatisfactory. The unimpaired rigor of the rule as to the assumption of risk became more in evidence as the use of safety appliances became more general and the number of accidents traceable to the employers' negligence fewer; so that after an unsuccessful attempt by Mr. Asquith, in 1893, to do away with the "Common Employment" rule and the implied contract of assumption of the risk, the time became ripe for the introduction of Mr. Chamberlain's Workmen's Compensation act, the gist of which is to provide unfailing and universal compensation for workingmen's injuries, without regard to negligence, which passed in 1897.

[9] Dr. George Zacher, Guide to the Workmen's Insurance of the German Empire, p. 3.

The efficiency of the British compensation act as compared with the employers' liability act is shown by the figures in 1904 which disclose that there were 3,065 deaths of employés in industrial accidents covered by the compensation act and of these 524 came before the county courts and but 112 were brought under the employers' liability act.

§ 19. Some characteristics of German insurance legislation.—In Germany the compensation is fixed officially, after an investigation by the police and by the organs of the trade associations without delay. Against the decisions of the trade association the entitled person may appeal within a month for an arbitration court of two representatives chosen by the employer and two by the employés, with a state official as chairman. The arbitration courts have been established and working since 1901, for both accident and invalidity insurance.[10]

As it is evident that both the trade associations and their individual members have a strong interest in diminishing the chances of accidents, the law confers on the trade associations, the important privilege of recommending regulations for the prevention of accidents. By such regulations not only the employers can be compelled, under penalty of higher assessments, to adopt the necessary measures for safety but also the workmen may be forced by fines to follow these rules.

"As regards the participation of the insured workmen in the organization of the Trade Associations, they are neither members of the Associations nor have they to bear any of the corporate burdens. They have, however, to take on themselves a portion of the aggregate liabilities caused by accidents, in so far as, together with

[10] Dr. George Zacher's Guide to Workmen's Insurance of the German Empire, p. 13.

the employers they contribute to the sick relief club, to which, for practical reasons, the care of patients is left during the first thirteen weeks of illness ("waiting time": about six and two-thirds percent of the whole burdens of Sick Insurance, i. e. four and one-half percent to the charge of the workmen). But the statistical calculations made show that the contributions of the workmen to the Accident Insurance stay in an inverse ratio to the contributions of the employers to the Sickness Insurance, for while the workmen, on their part, bear only eight percent of the entire burden for the accidents, the employers have to contribute four times as much (thirty-three and one-third percent) to the Sickness Insurance. From these reciprocal relations it follows as a necessity, that the employers should participate in the management of the Sick Associations, and that to the employés in their turn, must be conceded a share in the administration of the accident insurance. Accordingly the law permits representatives of the workmen, elected by them, to take part in the discussion of preventive regulations, and in the police investigations of accident cases, as well as in the proceedings of the Arbitration Courts and of the Imperial Insurance Office; on all these occasions the workmen enjoy the same rights as the representatives of the employers, and the law guarantees them the free exercise of this honorary co-operation."

CHAPTER IV.

THE ORIGIN AND DEVELOPMENT OF COMPULSORY INDUSTRIAL INSURANCE FOR WORKMEN IN THE GERMAN STATES-SICK INSURANCE, ACCIDENT INSURANCE, AND INVALIDITY AND OLD-AGE PENSIONS.

Sec.
20. Conditions in Germany which induced consideration of the subject.
21. Influence of Fichte and Hegel.
22. Views of Sismondi.
23. Views of Winkelblech.
24. Views of Schaeffle, father of compulsory state insurance.
25. Views of Wagner.
26. State insurance a matter of German origin.
27. Basis of compulsory insurance.
28. German system discribed.
29. The relation of the German industrial insurance law to Socialism.
30. Development of the insurance idea from the early guilds.
31. Miners' societies (Knappschaftskassen).
32. Ethical basis of system.

§ 20. Conditions in Germany which induced consideration of the subject.—Germany was the pioneer of Workmen's Insurance against the economic insecurity arising out of the modern wage system. This was brought about by the peculiar condition which surrounded the German workmen and the peasant classes. The governments of the several German states, which ultimately were to constitute the German Empire, were monarchial in form. Their absolutism remained substantially intact until the creation of the constitutional government which brought into existence the German Empire. For this reason individualism had little opportunity to develop in Germany and industrial freedom among the working classes had been strangled. Individualism and industrial freedom developed in the latter part of the eighteenth century and the first half of the nineteenth century and was brought about and advanced by the discussion of German philosophers, as to what

should be the duties of the state to its citizens. This doctrine attained an advanced state of development with the enactment of insurance against sickness, accidents and old age during the period 1883-1889.

§ 21. Influence of Fichte and Hegel.—The philosophers Fichte and Hegel planted the germ of socialistic doctrine which took root during that period and which has since been developed by the German socialists to so high a degree. Concerning the influence of these writers it is said by John Graham Brooks: "The three laws of insurance against sickness, accident, and old age and invalidity confessedly rest upon a conception of society which is sharply opposed to what is loosely called individualism, or laissez faire. In the portentous mass of this insurance literature the thought is constantly expressed that the weaker members of society will be excluded from all that accords with our usual sense of justice and fair dealing until the centers of social influence, of which the first and most powerful is the state, become imbued with the idea that a large proportion of the misfortunes, sickness, accident, and premature age are social in origin rather than individual; that a vast part of these evils spring, not from the fault of the individual, but from sources over which the individual has little or no control. The philosopher Fichte applies this thought with such eloquent power to the duty of the state as to result in a distinct practical change of the state's attitude."[1]

The social philosopher Lassalle shaped much social legislation in Germany. He was greatly influenced by two books written by Fichte, one in 1796, the other, Der geschlossene Handelsstaat, 1800. Lassalle quotes many sentences from this latter work about the duties of the State which in all essentials are the same as the innum-

[1] Fourth Special Report of Commissioner of Labor, 1893, p. 19.

erable utterances that filled the discussion upon state insurance during the years which immediately preceded the enactment of these laws.

The State, according to Fichte's conception, "is not to be negative nor to have mere police function, but to be filled with Christian concern, especially for the weaker members. The conceptions of property and contract are such as compel such intervention on the part of the superior authority in order to realize the ends of justice and equality among men." It is necessary to deal with these things in order to understand the theory of the State's duty to which Bismarck and the economists constantly made their appeals during the period of agitation which preceded this legislation.

§ 22. Views of Sismondi.—Sismondi, another of the powerful writers on this subject, said in 1819: "We regard the government as having the duty of protecting the weak against the strong." He contrasts sharply the permanent interests of society as a whole with fluctuating personal and private interests amidst which the weak and ignorant may go to the wall. Precisely as in the case of Professor Winkelblech he seems to have been converted to this view by a journey through certain industrial centers of Europe. He describes the unhappy condition of the laborers in the manufacturing centers, adding at the close: "I became persuaded that governments were upon the wrong road." "A state may be very miserable indeed even though a few individuals gather colossal fortunes."

§ 23. Views of Winkelblech.—Professor Winkelblech, prior to 1850,[2] in criticising the liberal school, maintained "the necessity of a general obligatory insurance as alone adequate to protect laborers in their struggle with the conditions of the great industries." He

[2] Organization of Labor, Vol. II, p. 328.

saw in this a sure way of helping on toward a greater equality of conditions, and above all, that such insurance would free labor from the haunting sense of insecurity, which was one of the chief evils to be remedied.

§ 24. Views of Schaeffle, father of compulsory state insurance.—Dr. Schaeffle is called the father of compulsory state insurance. He conceived the plan in the year 1867 or prior thereto. He advanced the idea of such insurance in his work on Kapitalismus und Socialismus.[3] As Joseph Chamberlain has since done in England, he maintained that the existing charity administration was not only a vicious sort of communism at its worst, but did not even begin to reach its end. Even if state insurance was socialistic, it was less harmfully so, in Schaeffle's opinion, than the existing forms of charity. In place of the old charity he demanded a "nationalized general self-provision for the whole life" (planmässige Selbstfürsorge für das ganze Leben). The expense must be paid by the employer, but would in his opinion become a part of the cost of production. Though the laborers pay the contributions, their minimum wage would rise by that amount. He found in this compulsory insurance a close analogy to compulsory education, an argument also used by those who have pleaded in England for old age pensions.

§ 25. Views of Wagner.—The same arguments were made against this interference by the State for the protection of the weak that are made today against the compulsory workmen's compensation acts that are being adopted. These laws were opposed because they were socialistic and paternalistic. The second, strongest opposition was that of private insurance companies of whom Professor Wagner said "Your own selfish interests blind you to the merits of a question whose only

[3] pp. 700-702, 731.

decision can come from the higher ground of general social welfare."

The most forceful leader of the social political economists, whose agitation covered a period of sixteen years prior to the passage of the insurance laws, was Professor Wagner. His point of view is concisely stated in the following quotation:[4]

"Perhaps the most prominent thought in this relation is Wagner's assertion that the great mass of weaker laborers will not be helped out of their condition by the free struggle of private business interests. He holds that these masses are unable to cope with the conditions which capitalistic production imposes upon them. His reaction against the current economic individualism is sharp and direct. The State has here not merely an exceptional task to perform, but the permanent duty of strengthening the laborer in his struggle. Not only should co-operative groups in every form be favored, but trade organizations as well. There is no limit, except the purely practical one, to the State's duty of interference. The very meaning of the 'social question' to Wagner is this putting of the laborer into a position where the struggle for existence can be made as fair as the nature of the problem admits. That the odds are now greatly against the weaker workers is not only admitted, but vigorously maintained. Neither private interest, nor charity, nor self-help is adequate to do this work of evening up conditions. The State, inspired by strong moral purpose, must act a bold and positive part in this programme."

§ 26. State insurance a matter of German origin.— State insurance was long an economic and social theory before it became a fact, and the general principles to which the theory appealed for its sanction were used in

[4] Fourth Special Report, p. 23.

Austria, France and England with frank acknowledgment that Germany had originated the idea out of which it all grew.[5] * * *

§ 27. Basis of compulsory insurance.—These ideas, respecting the duty of the State to the weaker members of society, point to the same conclusion as are deduced by Chief Justice Waite in Munn v. Illinois, 94 U. S. 113, in which he announced the conditions under which a public interest arose in the property of a person or corporation owing to the manner in which the property was used and consequently when and to what extent the State through the exercise of its police powers had a right to exercise its taxing power to take private property and to interfere with private contracts for the protection of the health, safety and general welfare of the public. To a greater extent can this be done by the government of the Dominion of Canada, under the British North America Act, Section 92, paragraph 13.

The views of Wagner in this report are set forth in the following paragraphs:[6]

"Public revenue to be so raised as to allow of the 'communistic' character of public bodies, above described, being developed wherever decided objections, consequent upon the peculiar circumstances of the case, do not exist. This 'communistic' character to be strengthened in favor of the poorer and socially weaker classes, with whom the economic and social struggle for existence and for social advancement is severest, by means of a system of administrative measures calculated especially to benefit them, yet the cost of which shall be defrayed by the general revenue and taxes; but this 'communistic' character of State activity to be weaker where the interests of the well-to-do and richer classes

[5] Fourth Special Report, p. 24.
[6] Fourth Special Report, p. 25.

of society come especially or exclusively into question. Here expenditures should be rather covered by a just system of taxes—including taxes based on the principle of taxation according to benefit—than by the use of the general revenue. This implies the regulation of the post, telegraph, and railway tariffs, judicial charges, school fees, etc.

Taxation to be so adjusted that, besides fulfilling its primary function, that of providing the revenue needed to cover public requirements, it may, as well as possible, fulfill a not less important indirect purpose, which is twofold: (1) Regulative interference with the distribution of the income and wealth of private persons, so far as that distribution is the product of free economic intercourse, as by the medium of prices, wages, interest, and rent, with a view to counteracting the harshness, injustice and excessive privileges caused by the distribution obtaining in this intercourse; (2) and at the same time regulative interference, supported necessarily by further administrative measures, and eventually by compulsion (as in the domain of industrial insurance) in private consumption. This latter can be done by making the lower classes provide—by means of direct and indirect taxes, especially indirect (excise), which in this connection are often very suitable—the revenue necessary for administrative purposes calculated to benefit them, this being affected by diverting income which they may be applying to improper, perhaps injurious, or at the least, less necessary and wholesome purposes (e. g., drink) to purposes more beneficial to society, the class, or the individual."

Not only is every principle upon which such a step as compulsory industrial insurance could be based stated in the foregoing quotation but it stands in direct and unbroken line with the economic traditions of the Prussian monarchy.

It is to be further noted in commenting upon the quotation given above from Wagner, that his plan of governmental regulation affecting both the rich and the poor, provided for the taxing of both the rich and the poor in an equitable manner so as to correct the evils to which each class is inclined.

For example, under item (1), his plan of taxation which provided for the taxation of "income and wealth" his theory was that "so far as income resulted from economic intercourse, taxes should be levied with a view to counteracting the harshness, injustice and excessive privileges caused by the distribution obtaining in this intercourse."

But note also in like manner under item (2) of his plan of taxation that he would tax the poor by indirect taxation in such a manner as would correct their improvident tendencies, characteristic of them, and he includes compulsory industrial insurance among his regulative plans of interference.

The great significance of these theories of Wagner is the following: The Industrial Insurance which has been developed in Germany along the above lines is based upon the theory not that the employer is to make a contribution to the employé but that the funds necessary to be raised to carry out the German plan of industrial insurance shall be raised so that both the employer class and employé class shall contribute to the funds to the extent that each class is presumed to be equitably benefited in the establishment of a new economic return.

§ 28. German system described.—Professor Charles R. Henderson[7] describes the German system as follows: "It is sometimes asserted that the German system of workingmen's insurance is nothing better than a dis-

[7] Industrial Insurance in the United States, 2nd ed., p. 7.

guised form of poor relief, a kind of gift from above paid by the government at the expense of taxpayers to prevent rebellion of the 'lower classes.' The classic message of the emperor[8] gives a more just interpretation of the purpose of the 'social policy' of the nation. The demand is made on the basis of the duty to the people and the common welfare, because health, security and freedom from dependence are not a mere class interest but belong of right to all. Those who risk the greatest danger to life and limb should not be left to carry the entire cost of that hazard.

Insurance is not poor relief but common justice, a method of fairly distributing the extraordinary costs of civilization. Since such insurance never has been made general and never can be made general by any voluntary scheme, the government, the agent of the common intelligence, conscience and will, intervenes far enough to enforce obligation, to regulate the method and to insure the rights of all concerned. Thus in the United States the government, under the right of eminent domain, takes landed property for a consideration and gives it to railroads for right of way or as subsidy; and in turn prescribes the terms on which a railway corporation can enjoy these special privileges. Thus also the federal government grants privileges to certain banks and controls the method of their administration. In Germany the government seeks in its insurance laws to encourage and stimulate the interest of both the employers and employés in the system. The entire system is based on the principles of mutual benefit, self-government and local initiative. Both employers and employés have a right to participate in the administration and judicial application of the law, as both share equitably in the cost. It is not state insurance, but insurance on the

[8] Ante, § 16.

basis of mutuality and self-government, under the regulation of law. It is precisely in this administration that the workingmen feel themselves to be free agents and intelligent participants in the affairs of their country. There is no taint of charity from first to last; each man pays his share of the cost, has a voice in the control and can set up a legal claim when he needs his benefits. All this removes the insurance system by the diameter of the moral world from poor relief and private charity.

The German system does not make other forms of protection superfluous, since it simply provides for the necessities of existence; it does not remove the motive for forming trade unions and fraternal societies, nor for investing in extra insurance in life insurance companies, nor for savings. All these organizations of thrift flourish in Germany." And again he says:[9]

"It is sometimes asserted—in advance of proof—that accident, sickness, and old age insurance is a burden upon the capital, industry, and commerce of a nation. As Germany is the country which annually does more than other nations in this direction it seems not unfair to mention the fact that the years of trial of her system of insurance have been precisely the years in which that nation has forged to the front rank in the world of manufactures and commerce. The nation has grown rich and the workingmen have improved their condition so that they are not anxious to emigrate as formerly. On all these points we have several recent publications which reveal the situation with a wealth of statistical evidence."

In another authoritative work[10] occurs the following comment on this scheme of industrial insurance:

"It may be briefly described as follows: In carrying

[9] Henderson Industrial Insurance, p. 6.

[10] Frankel & Dawson on Workmen's Insurance in Europe, p. 9. (Prepared under Russell Sage Foundation.)

on any given industry for the benefit of those who will enjoy the products or the services supplied thereby, there will be, on the whole, taking into account all the various establishments engaged in those industries, a more or less stable aggregate amount of loss and damage occasioned by industrial accidents. While each particular accident, considered by itself, might appear to have been preventable if an extraordinary degree of caution had been exercised, it will also appear, when the losses are spread over the entire industry, and especially when the experience of many years is combined, that there is a more or less steady ratio between the financial loss and the financial value of the entire product, indicating that accidents are governed by laws of probability and are to a certain degree inevitable.

In other words, this loss or damage, as much as loss or damage by destruction of material, by wear and tear of machinery, etc., is a part of the cost of the commodity in the production of which the workingman was employed at the time the accident took place.

It follows that the workingman, or his family in the event of his death, should be compensated in a reasonable amount for the consequences of an industrial accident; not in order that some one shall be mulcted, on the ground that he was at fault, but in order that this portion of the cost of the product or services shall not be transferred from the employer and the ultimate consumer to the workingman and his family, crushing them in many cases, and eventually shifting the burden to the community in the most undesirable form of charity." Further along[11] the authors say:

"As stated above, the new statutes provide for indemnification of workingmen for the consequences of industrial accidents on the principle that their cost

[11] Henderson Industrial Insurance, p. 18.

should fall upon the employer, not as a punishment, nor because he was negligent, but merely to throw the burden ultimately on those who enjoy the product."

§ 29. The relation of the German Industrial Insurance Law to Socialism.—The Prussian government prior to the war of 1870-71 entertained no anxiety about socialism. It had cause for anxiety, however, when the socialist vote increased from 350,000 in 1874 to about 500,000 in 1877.[12]

Lassalle's type of practical socialism (productive co-operation of associations) from the time of the Socialistic congress of 1875 gave way more and more to the Marx type which attacked the then existing industrial order with its wage system, private rent and interest. They ceased to talk about the co-operative association of Lassalle's type. Following the two attempts on the life of the German Emperor in 1878, Bismarck had drastic laws passed prohibiting meetings, suppressing clubs and publications active in the propagation of the Marx doctrines. The quotation below not only shows what the Marx doctrine was but what the government was striking at.

"The endeavors of social democracy are aimed at the practical realization of the radical theories of modern socialism and communism. According to these theories the present system of production is uneconomical, and must be rejected as an unjust exploitation of labor by capital. Labor is to be emancipated from capital; private capital is to be converted into collective capital; individual production, regulated by competition, is to be converted into systematic co-operative production; and the individual is to be absorbed in society. The social democratic movement differs greatly from all humanitarian movements in that it proceeds form the

[12] Fourth Special Report, p. 27.

assumption that the amelioration of the condition of the working classes is impossible on the basis of the present social system, and can only be attained by the social revolution spoken of. This social revolution is to be effected by the co-operation of the working classes of all states with the simultaneous subversion of the existing constitutions. The movement has especially taken this revolutionary and international character since the foundation of the International Workingmen's association in London in September, 1864. * * * It is, in fact, a question of breaking away from the legal development of civilized states and of the complete subversion of the prevailing system of property. The organization of the proletariat, the destruction of the existing order of state and society, and the establishment of the socialistic community and the socialistic state by the organized proletariat—these are the avowed aims of social democracy.

The well organized socialistic agitation, carried on by speech and writings with passionate energy, is in accord with these ends. This agitation seeks to disseminate amongst the poor and less educated classes of the population discontent with their lot as well as the conviction that under the present regime their condition is hopeless, and to excite them as the "disinherited" to envy and hatred of the upper classes. The moral and religious convictions which hold society together are shattered; reverence and piety are ridiculed; the legal notions of the masses are confused; and respect for the law is destroyed. The most odious attacks and abuse which are leveled at the German empire and its constitutions—at royalty and the army, whose glorious history is slandered—give the socialist agitation in this country a specifically anti-national stamp; for it estranges the minds of the people from native customs and from the fatherland. The representations which are given, both by spoken and written word, of former revo-

lutionary events and the glorification of well known leaders of revolution, as well as the acts of the Paris commune, are calculated to excite revolutionary desires and passions and to dispose the masses to acts of violence. The law of self-preservation, therefore, compels the state and society to oppose the social democratic movement with decision; and above all, the state is bound to protect the legal system which is threatened by social democracy, and to put restraints upon socialistic agitation. True thought can not be repressed by external compulsion; the movements of minds can only be overcome in intellectual combat. Still, when such movements take wrong ways and threaten to become destructive, the means for their extension can and should be taken away by legal means.

The socialistic agitation, as carried on for years, is a continued appeal to violence and to the passions of the masses with a view to the subversion of state and social order. The state can check such an enterprise as this by depriving social democracy of its most important means of agitation and by destroying its organization; and it must do this unless it is willing to surrender its existence, and unless there is to grow up amongst the population the conviction either that the state is impotent or that the aims of social democracy are justifiable. * * * Social democracy has declared war against the state and society, and has proclaimed their subversion to be its aim. It has forsaken the ground of equal right for all, and it can not complain if the law should only be exercised in its favor to the extent consistent with the security and order of the state."[18]

While Bismarck admired Lassalle's doctrines and aims he recognized a vital difference between them and those of Marx. He took a bold stand against the doc-

[18] Fourth Special Report, p. 27.

trines of Marx and as boldly stood with Lassalle in saying "the state shall be put fearlessly at the disposal of the laboring classes" and presented to the Reichstag his elaborate scheme of compulsory insurance for the working masses.

§ 30. Development of the insurance idea from the early guilds.— We have next to briefly point out the facts of the origin and development of Industrial Insurance by the German guild of a special type called Knapp-Schaftskasse. For five hundred years there have existed in Germany certain guilds which are privileged societies of employers (Handwerkmeisters) or masters for their own benefit as well as for the benefit of their journeymen and apprentices. There were connected with these guilds benefit societies, relief, burial, and sick associations.

It must be noted that the development of industry in Germany is of so much later date than in England or America that some illustrations must be given in order to appreciate the bearing of trade legislation upon social questions.

Industry with a world market had attained such a development in 1802 in England as to bring into existence the first interference with the freedom of industry —the Morals and Health act. In 1832 the Reform Bill was enacted. During this period of 30 years, the population of cities in England, like Manchester, had on an average increased 150 per cent. The earlier economic students could not foresee the conditions which this new grouping of population would bring upon society. During the period of 1802 to 1844 many acts were passed in England first to protect working-children, then later for the protection of working-women. Scarcely a law has been passed to guard the safety of the apprentice, the child, the woman, or of poor men in dangerous employ-

ments, that has not been long and stubbornly fought upon theoretical grounds as to the nature of trade, of economic law, or of natural law. Today humane principles of legislation have been so far developed in respect to legislation demanded for any set of workmen as to make the inquiry one not concerning economic or natural law but rather concerning the plain practical exigencies of the health and safety of the laborers. Two generations passed away before this position was reached even by statesmen!

This principle of insurance has never been denied in Germany, except in part by those, who, during the period from 1830 to 1870, were the followers of Adam Smith and known as the Manchester party in Germany. They exercised a powerful and beneficial influence upon the economic policy of that country.

However, beginning with the compulsory industrial insurance legislation of 1883, legislation of this kind has freed itself almost wholly from this economic liberalism. It should be noted, however, that among the achievements of this school there should be mêntioned: the Tariff Union; Uniformity in Weights and Measures; the doing away with imprisonment for debt and the usury laws; the removal of marriage restrictions, of river tolls, and "especially the larger freedom introduced into the whole body of trade regulations (Gewerbeordnung), together with the Freizügigkeit (the right to go about the country as one likes), against which principle, ominously enough, powerful voices are now more and more heard."[14]

Bismarck rejected the liberal and voluntary industrial policy and appealed to the earlier and older social legislation which preceded the liberal legislation.

[14] Fourth Special Report, p. 31.

John Graham Brooks describes the conditions surrounding the worker and his guilds as follows:

"A state of serfdom practically existed in Bavaria until 1808. Freedom to choose one's handicraft, even, was not allowed in other parts of Germany until 1810. Until the revolution of 1848 countless petty restrictions hemmed in the life of the laborer as well as of industry in general. The most advanced part of Germany, Prussia, only brought in liberty for the laborer to move freely from town to town (Freizügigkeit) in 1842. Though the laws of Stein and Hardenburg had done so much to destroy the old guilds, they yet dragged lumbrously along until the Prussian trade regulations of 1845, which mark so important a change in this history as to demand closer consideration. The law of 1842, allowing laborers to pass freely from one place to another, introduced changes as great as the Stein legislation of 1811, which broke down so many of the old guild privileges. From a condition under which the choice of a trade was for the laborer and not by him, to conditions under which he could freely elect his craft, the difference was profound. In many parts of Germany the old trade monopolies existed in such form as to make the free development of trade impossible. Not only was competition shut out in the more considerable trades of tinning and milling, but especially in the minor provinces, such monopolies extended to the smaller trades of the barber and chimney-sweep. That these special privileges of the guilds would all have been swept away if the Stein legislation had been allowed to do its work is evident. The new freedom was feared, however, and the trade regulations of 1845 are a protest against the destruction of vested rights. That portion of the trade laws which more especially concerns us recognizes two kinds of

sick associations—the apprentice society and the guild (Innung).

In section 144 the apprentices and assistants are permitted to retain their mutual benefit societies, but it is reserved to change and adapt them to new and existing circumstances. New societies may also be formed under conditions fixed by government. An apprentice is not allowed to be excluded from such a society because he does not work with a member of a guild (section 169). To the guilds is also given the right to form sick, burial and relief societies, as well as savings banks, though they are not compelled to form such society for every branch of industry. It will be seen that these laws of 1845, in reacting against those forces which threatened to destroy the guilds, yet endeavored to preserve as much liberty, self-government, and self-discipline as was possible in an effort to save the guilds and continue their work. The workmen also were frightened by the loss of a powerful influence which the guild had secured to them. Before 1845 they expressed fears such as would be felt by trade unionists of today if their rights of organizing were threatened. The conservative character of the law is, however, seen in such provisions as that which compels those who form a guild to prove their capacity before some authorized body of examiners, as the academy of arts or the committee appointed for such purpose. Consent to enter a guild might be refused by the communal authorities to criminals, to bankrupts, to those residing where a similar guild already exists, etc. All persons in mechanical trades who belong to no guild could by local statute be formed into an 'inferior guild.' The community is here supreme over the decisions of the individual. Although the elite workmen were freed from compulsion to join such societies, the less able workmen were so far under con-

straint that they must give satisfactory reason before the authorities why they failed to form or join some benefit society."[15]

§ 31. Miners' societies (Knappschaftskassen).—The fundamental principles of workmen's insurance as illustrated by the miners societies are thus pointed out by Mr. Brooks:

"An illustration may now be given from among the miner's societies (Knappschaftskassen) which will illustrate in more detail the actual working of the insurance principle. In this bit of history is to be seen almost every feature, good and bad, which the imperial scheme now presents. These societies provided for sickness, accident, burial, and also granted pensions to orphans, widows, and invalids, thus covering even more than the state laws now cover. In its later development the mining society was administered by a committee composed half of employers, half of laborers. The contributions were also divided between both. The employer was made responsible for the entire sum, being allowed later to deduct the laborers' share from the wages when paid. Thus it is seen why this special form of association was chosen by the government as a type upon which to build the imperial structure."[16]

§ 32. Ethical basis of system.—Reviewing the long and serious strife which attended the development of the principles of compulsory workmen's insurance during the period of 1790 to 1854 it is important to recognize the incontestable fact of history, that these laws were the outgrowth of the ethical elements of sympathy, pity, and good will, playing so important a part as to mould

[15] Fourth Special Report, 1893, p. 31.
[16] Fourth Special Report, p. 37.

first the customs and then the laws of their primitive insurance societies. Here Mr. Brooks further observes:

"Nothing is more obvious than the fact that mere business did not alone dictate those first regulations that made the strong and the fortunate willingly help to bear the burden of the weak. The opponents of state insurance make no issue as to this fact; they only insist that the state cannot, from its very nature, carry out and enforce such principles as those upon which universal insurance rests. The believers in such state insurance carry over the ethical idea, that already existed in the small free group, into the state asserting that the state, with compulsory powers, is alone competent to secure the blessing of such insurance to the whole masses of the people. Thus there is a distinct issue of fact rather than of theory. From the thirteenth century to the time of Frederick the Great, nothing like compulsory insurance, even in small mines, can be said to have existed. Until the Prussian law of 1854 there was no general state compulsion for miners."[17]

[17] Fourth Special Report, p. 39.

CHAPTER V.

THE ECONOMIC BASIS OF COMPULSORY INDUSTRIAL INSURANCE AND COMPENSATION LAWS FOR INJURED WORKMEN.

Sec.
33. Statement of problem from the economic standpoint.
34. Statistical studies exhibiting effects of old and new systems of compensation.
35. Statistical experience under compulsory State insurance in Germany.
36. The question of fault and prevention of accidents—compensation—German statistics.
37. Experience in New York.
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49. Statistical results of the per cent. of workingmen who receive compensation under the common law and liability laws.
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51. Remedies proposed—German and English plans.
52. Specific provision against the economic insecurity of workingmen in the United States.
53. Argument for joint contribution by employer and employé.

§ 33. **Statement of problem from the economic standpoint.**—It is proposed in this chapter to present the economic basis for the substitution of a new remedy, namely, compulsory industrial insurance for workingmen, or workmen's compensation acts, in lieu of the common and statutory liability law remedies, as a means for compensating workmen who are injured in course of their employment.

It will be shown not only that the common (and liability) law remedy in its present form does not furnish compensation of any kind in to exceed 12% of the cases of injuries to employés, and even in those cases in which compensation is paid, the compensation paid does not on the average exceed one-fifth of what is regarded as adequate compensation, but also that no modification of the common law remedy can be made whereby these results will be materially improved. Hence that the old common law remedy must be abandoned and a new remedy substituted therefor.

§ 34. Statistical studies exhibiting effects of old and new systems of compensation.—In the evolution of economic and sociological problems of a nation, already largely industrialized, gross inequalities in the material condition of the different classes of its citizens arise, and when the public mind becomes conscious of the hardships flowing from these inequalities, the legislative and judicial arms of the state are called upon to regulate, to equalize, and to adjudicate equitably such economic abuses and hardships.

The first steps to be taken in adjusting and relieving society of the said abuses are to inquire into and determine what the exact causal facts are, from which flow these abuses, before the legislative and judicial arms of the State can formulate and apply a just and equitable remedy. It is the determination of the causal facts of these economic abuses and the magnitude of their evil effects that constitute the most difficult step to accomplish, and upon the clear determination of which the legislatures and the courts of last resort insist first upon knowing, before they will enact and sustain the putting into operation of an adequate remedy for the injurious economic abuses involved in this problem.

Therefore, the discussion of "what provisions can be made for workingmen and their dependents, to avoid the economic insecurity which accompanies the modern wage system," resolves itself into the following plan:

(A) The location and determination of the causal facts and their fundamental characteristics which produce the economic insecurity of workingmen, and characteristics which accompany the modern wage system, shall first be analyzed.

(B) The remedy to cure these economic inequalities and in what way the legislative and judicial authorities of the States can put the proposed remedy into operation and perpetuate the same.

§ 35. Statistical experience under compulsory State insurance in Germany.—In 1887 there were insured against sickness and accidents in Germany 3,861,560 workingmen among 319,453 establishments,[1] and the number of notices of accidents was 106,001. A special analysis of the different elements of the causes of these accidents will be found in the following section.

	Persons Insured
In 1907, these were insured in Germany against accidents:[2]	
Industrial, building, and marine trade associations (associations, 66; establishments, 637,118)	9,018,367
Agriculture and forestry trade associations (associations, 48; establishments, 4,710,401)	11,189,071
State executive boards (boards, 535)	964,589
	21,172,027
In 1897 there were insured in Germany against accidents in the same associations and 409 State executive boards, in round numbers	18,500,000

§ 36. The question of fault and prevention of accidents—Compensation—German statistics.—The follow-

[1] Fourth Special Report of the Commissioner of Labor, 1893, p. 82.

[2] Frankel and Dawson, Workingman's Insurance in Europe, 1910, p. 101.

ing table shows the accident statistics of industries for the three years, 1887,[3] 1897[3] and 1907,[4] under the German law:

By fault of—	1887 Per cent.	1897 Per cent.	1907 (46,000 accidents) Per cent.
Employer	20.47	17.30	16.81
Employé	26.56	29.74	28.89
Both parties	8.01	10.14	9.94
Due to negligence of the parties	55.04	57.18	55.64
Due to inevitable risks of the industries and other causes	44.96	42.82	44.36
	100.00	100.00	100.00

This table, covering a period of 20 years of experience, shows not only the elements of fault which enter into the problem, but also supplies a valuable basis for further improvement of preventive measures, since from 55 to 57 per cent. of all accidents are due either to the fault of the employer, employé, or their combined negligence.

It is of interest in this connection that the tables of the Minnesota and Wisconsin labor departments ascribe from 40 to 50 per cent. of all industrial accidents, on the average, as due solely to the inevitable risks of the business. The Austrian tables show 70 per cent. are attributed to this cause.[5]

It is first to be noted that this table represents the experience of the operation of the compulsory German State Insurance Law, for a period of 25 years, under the operation of which, from 4,000,000 to 21,000,000 workingmen and their dependents engaged in all possible in-

[3] Dr. George Zacher, Introduction to Workmen's Insurance in Germany, p. 14.

[4] Bulletin of Bureau of Labor, 1908, p. 120 and § 47.

[5] Report of the New York Commission, p. 25.

dustrial, governmental, and agricultural occupations of a great nation, with respect to the determination of the element of fault entering into the causes of accidents to workmen. We shall define the natural hazard of any occupation by the equation:

Inevitable risk + combined negligence of both employer and employé=natural hazard.

From this table it follows:

	1887	1897	1907
Fault of both parties	8.01	10.14	9.94
Inevitable risks	44.96	42.82	44.36
Natural hazard	52.97	52.96	54.30

Average, 53.41 per cent.

During the period 1887-1897 there were put under the operation of the German law the workingmen employed in the occupations of agriculture, forestry, building trades, to the number of 12,250,000, who heretofore were not insured.[6] This large class of workingmen were the most ignorant and poorest trained of all the workingmen insured under the law. It will be seen that the per cent. of the causes of accidents attributable to the negligence of the employé increased from 26.56 per cent. in 1887 to 29.74 per cent. in 1897, an increase of almost 3 per cent. During the next decade, 1897-1907, this element of fault fell from 29.74 per cent. to 28.89 per cent. while the number of such workingmen remained practically at the 12,000,000 mark. This is due to a gradual improvement of the ways and means of preventing accidents so carefully studied in Germany.

The superior intelligence of the employers made a more marked improvement in the reduction of the element of fault due to the employer's negligence.

Thus the causes of accidents attributable to the em-

[6] Frankel and Dawson, Workingmen's Insurance in Europe, p. 101.

ployer in 1887 was 20.47 per cent; in 1897 it fell to 17.30 per cent; and during the next decade it fell to 16.81 per cent in 1907. But, notwithstanding these improvements in the reduction of the element of fault, yet the per cent of the causes of accidents due to natural hazard remains practically constant, as shown, at 53.41 per cent.

This leads us to the first fundamental conclusion of primary evidence in our problem:

That no matter how careful the employer is, or how careful the employé may be, or how high the efficiency of the State may rise in the application of ways and means in the prevention of accidents, the natural hazard remains practically constant. That on the average from 52 per cent to 53 per cent of the causes of all accidents are due to the natural hazard of the business.

This is the first element of insecurity of workingmen under the modern wage system, for the reason that an injured workman can not recover at all in an action at law for damages on account of an accident received while working for his master until he can prove that his master was negligent and that such negligence was a contributing cause to his injury.

The object of giving an injured workman a cause of action for injuries is not only to compensate the workman especially in the case of death or total disability, but principally to furnish some compensation to his dependents, who might become public charges when their means of support are cut off by such an accident.

The entire equity side of our courts has been built up on the theory that justice should be done between man and man when the common law does not furnish any remedy or does not furnish an adequate remedy.

Here in this problem there is the one element alone of 52 per cent of all cases of injury for which the common law does not presume to furnish any relief at all—

none for the injured workman and none for the dependents who, in most of such cases, must be supported by the community in which they live. This leads us to the second fundamental conclusion of primary evidence in our problem.

The table shows that the element of the causes of accidents which were attributable to the workingmen's own negligence (taking the workmen of a State or Nation as a whole) is on the average: 1/3 (26.56 per cent+ 29.74 per cent+28.89 per cent)=28.39 per cent.

The effect on dependents is just the same whether the cause of the injury was due to the negligence of the employé, to that of the employer, or to the natural hazard of the business. The common law in theory denies the injured workman relief in all of these cases, to-wit, 28.39 per cent, and, further, there is no cause of action at all in the 53.41 per cent of the cases due to the natural hazard. Or in the combination of the two elements, natural hazard and negligence of the workmen, that is, in 81.80 per cent of the cases of injury the common law does not presume to furnish any compensation either to the workman or his dependents.

The third conclusion of primary evidence in our problem relating to the economic insecurity of the workingman under the modern wage system in the United States is:

That the per cent of cases of injuries to workingmen, the causes of which are attributable to the negligence of the employer, is on the average but 18.20 per cent of the cases.

It is susceptible of proof that the foregoing elements of negligence of employer, employé, and natural hazard are practically the same in the United States as they are in Germany.

It will be hereafter shown in presenting the "Statistical experience of workingmen under the common law

and liability laws in the United States," that while in theory the common-law remedy furnishes compensation in 18.20 per cent. of cases of injuries to workingmen, that, however, in practice that compensation in any amount is paid in less than 6 per cent. to less than 12½ per cent. of the cases, and then only in amounts about one-fifth of adequate compensation.

§ 37. Experience in New York.—During the years 1906, 1907 and 1908, ten insurance companies, which keep employers' liability records, doing business in New York,[7] received in premiums from—

Employers	$23,524,000
Paid to injured employés	8,560,000
Waste	$14,964,000

Nothing could more strikingly set forth the waste of the present system. Only 36.34 per cent of what employers pay in premiums for liability insurance is paid in settlement of claims and suits. Thus, for every $100 paid out by employers for protection against liability to their injured workmen, less than $37 is paid to those workmen; $63 goes to pay the salaries of attorneys and claim agents whose business it is to defeat the claims of the injured, to the cost of soliciting business, to the cost of administration, to court costs, and to profit.

Out of this 36.34 per cent the injured employé must pay his attorney. The same report shows that the attorney gets 26.13 per cent of what is paid to the injured employé. This investigation covers 46 cases where the recovery was above $1,500 each. In small recoveries the attorney fees take a larger proportion. This report shows that not more than somewhere between 20 and 25 per cent of the money paid by the employing class goes

[7] First report of the Employers' Liability Commission, New York, p. 31.

actually into the pockets of injured workmen for their dependent families in death cases.

§ 38. The Pittsburgh survey.[7a]—The investigation recently conducted in Allegheny county, Pa., under the direction of the Pittsburgh survey showed that out of 355 cases of men killed in industrial accidents, all of whom were contributing to the support of others and two-thirds of whom were married, 89 of the families left received not more than $100, and 61 families received something more than this $100. In other words, 57 per cent. of these families were left by their employers to bear the entire burden of income loss and granting that all unknown claims would be decided for the plaintiffs, then only 26 per cent. received in compensation for the death of a regular income provided more than $500, a sum which would approximate one year's income of the lowest paid of the workers killed.

The proportion of the loss borne by employers in injury cases does not differ greatly from that in death cases.

Thus, out of 288 injury cases, of the married men alone, 56 per cent received no compensation; of single men contributing to the support of others, 69 per cent received no compensation; of single men without dependents, 80 per cent received no compensation.

§ 39. The Wisconsin bureau of statistics.—The great financial losses borne by the workmen are set forth by the Wisconsin bureau of labor and statistics in the following report of 306 non-fatal cases of injuries:

	Cases.	Per cent.
Received nothing from employer	72	23.5
Received amount of doctor bill only	99	32.4
Received amount of part of doctor bill only	15	4.9
Received something in addition to doctor bills	91	29.7
Received something but not doctor bills	29	9.5
Total	306	100.0

[7a] In Work Accidents and their Cost by Crystal Eastman, Charities and the Commons, March, 1909.

In other words, we may say that in two-thirds of the cases part or all of the doctor bills were paid, but in less than one-third was anything more paid, and in about one-fourth of the cases nothing whatever was paid.

Of 131 non-fatal cases in Wisconsin, concerning which reports were secured by factory inspectors, the following disposition was made:

	Cases.	Per cent.
Received nothing from employer	28	21.37
Received doctor bills only	56	42.75
Received something—doctor bills	10	7.63
Received something, but not doctor bills	34	25.96
Not settled	3	2.29
Total	131	100.00

§ 40. The report of the Illinois commission.—The employers' liability commission of the State of Illinois has recently made a report of its investigation of industrial accidents and employers' liability at a cost of $10,000.[8]

More than 5,000 individual accidents were investigated and recorded, together with comparative figures and analysis. A few words as to what the report shows may be of value:

Six hundred and fourteen fatal accidents are recorded.

The families of 214 of these workers received nothing in return for the loss of the bread-winner.

One hundred and eleven damage suits are pending in court.

Twenty-four cases have been settled through court proceedings.

Two hundred and eighty-one families settled direct with the employer.

Skilled railroad employés, in settlement for death

[8] The summary which follows, is taken from statistics prepared by Edwin R. Wright, Secretary of the Commission.

claims, averaged about $1,000; steel workers, $874; railroad laborers, $617; skilled building tradesmen, $348; skilled electric railway employés, $310; unclassified workmen, $311; miscellaneous trades, $292; packing-house employés, $234; general laborers, $154; mine workers, $155; electric railway laborers, $75; teamsters, none; building laborers, none.

A further summary may be offered. Of every 100 industrial accidents, 15 go to court—7 are lost and 8 are won. Ninety-two injuries out of every one hundred receive no compensation. This includes both fatal and non-fatal accidents.

Another interesting feature is this: A thorough search through the record reveals 53 fatal cases of recent date. In fatal cases the usual defenses of the employer—the fellow-servant doctrine, assumption of the risk, etc.—did not apply or there would not have been a recovery at all.

For these—the very pick of industrial cases—the average recovery for death was only $1,877.36. Of this an average amount of $750.95 was paid to attorneys or expended in court fees, etc., leaving an actual payment of $1,126.41 to the family of the dead worker. Thirty-four widows were compelled to seek employment and 65 children left school to help keep the wolf from the door.

§ 41. **Ohio statistics.**—The following table shows the results of investigations of the economic effects of industrial accidents on workingmen and their dependents, for the period of 1905-1910, in Cuyahoga county (Cleveland), Ohio, prepared under the direction of the author for the Ohio legislature.[9]

[9] See Report of the Employers' Liability Commission of Ohio, Pt. I. pp. XXXV-XLIV.

TABLE SHOWING PER CENT RECEIVING SETTLEMENT IN FATAL CASES.

Civil status of decedent.	Number of cases taken from coroner's records.	No. receiving settlement through probate court.	No. settling without probate going to court.	No. securing awards in court of common pleas.	Per cent. securing settlement.	Per cent. not securing settlement.
Married	115	37	10	1	41.7	58.3
Single	60	14	--	1	25.0	75.0
Total	175	51	10	2	36.0	64.0

A settlement was made with the dependents in 36 per cent of all the cases, and in 42 per cent of those in which the decedent left a widow. In practically all of these cases an amicable settlement was made with the representative of the deceased, appointed by the probate court, either out of court in the first instance or after the institution of a suit.

§ 42. **Average amount received in settlement in Ohio under old system.**—An examination of 285 fatal cases proved that the average amount paid per case was $838.61. In 176 of these cases the decedent left a widow, and the average settlement was $1,056. The exact figures are given in the following table:

TABLE SHOWING AVERAGE AMOUNT RECEIVED IN DEATH CASES.

Civil status of decedent.	Number of cases.	Average amount received.
Married	176	$1,056.51
Single	109	485.87
Total	285	$ 838.61

The amount received varied from funeral expenses to $5,000. In the case of the dependents of 109 single

workingmen killed, the average amount received was $485.87.

TABLE SHOWING AVERAGE AMOUNT OF SETTLEMENT OF FATAL CASES WITHIN SPECIFIED LIMITS, AS DISCLOSED BY COURT RECORDS.

Range of amount of settlement.	Court in which settlement was made.	No. of cases.	Average amount of settlement.
Up to $300	Common pleas court	15	$ 178.93
	United States circuit court	4	187.50
	Probate court	116	161.05
	Total	135	$ 163.83
$300 to $1,000	Common pleas court	14	$ 542.85
	United States circuit court	10	587.54
	Probate court	83	507.78
	Total	107	$ 519.81
$1,000 to $2,000	Common pleas court	8	$1,231.25
	United States circuit court	14	1,290.00
	Probate court	49	1,270.59
	Total	71	$1,269.98
$2,000 to $4,000	Common pleas court	6	$2,241.67
	United States circuit court	7	2,364.28
	Probate court	29	2,704.13
	Total	42	$2,581.13
$4,000 and over	Common pleas court	1	$4,500.00
	United States circuit court	6	5,419.17
	Probate court	8	4,687.74
	Total	15	$4,991.66
	Total in common pleas court	45	$ 915.20
	Total in United States circuit court	40	1,775.26
	Total in probate court	285	838.61
	Total	370	$ 949.19

These conclusions are deduced from this table.

First. That the total amount of compensation received by the dependents of 313 workingmen out of a total number of 370 killed (or 87.86 per cent) of those receiving settlement is $165,905.35, which is only 47.81 per cent of the total amount, $351,200.35, paid to the dependents of the 370 workingmen killed; that the total amount of compensation received by the dependents of 57 of these 370 workingmen killed (or 12.14 per cent of those receiving settlement) is $183,295, which is 52.19 per cent of the total amount paid the dependents of the 370 workers.

Second. That on the average in Ohio, taking the best 15 cases out of the 370 families left dependent by death of the breadwinners, receive on the average $4,991.66. Deducting now (see next section) 25 per cent for attorney fees and $300 for doctors' bills, funeral expenses, and interest due to delays in making settlements (assuming that the largest damages are paid to the earners of the largest wages), we have $3,443.75 as the maximum compensation paid under the present system on an average for each of the best 4 cases out of 100 families left dependent when the head of the family is killed in industrial employment. The obligatory industrial insurance act passed by both houses of the Legislature of Ohio in May, 1911, provides a maximum of $3,400 and a minimum of $1,500, and doctors' bills and hospital expenses not to exceed $200 in all cases.

§ 43. **Attorney fees under old system in Ohio.**—It was intended to give in the following table an accurate idea of what per cent. of the amount of settlement is retained by the plaintiff's attorney as remuneration for his services. Specific amounts were ascertained in so few cases however that the table as given will be misleading unless taken with a few grains of allowance. The great majority of the cases included in it were settled either out of court or before going to trial. The aver-

age for these cases is shown to be about 24 per cent. and this includes both fatal and non-fatal cases.

The table shows that approximately one-fourth of the amount received was paid out as plaintiffs' attorney fees and as court costs.

TABLE SHOWING ATTORNEY FEES UNDER OLD SYSTEM IN OHIO.

Court.	Number of cases in which amount of fees was ascertained.	Total amount of settlement.	Total amount of attorney's fees.	Per cent.
Common pleas	53	$78,500	$20,650.82	26.3
United States circuit court	13	56,850	14,100.00	24.6
Probate Court	88	97,862	19,918.73	20.3

§ 44. Social and economic results of accidents.—An individual investigation to determine the social and economic conditions of families deprived by industry of their breadwinners was made in 86 cases. The results, as compiled in the following table, show that nearly 56 per cent. of the widows were compelled to go to work, and at an average weekly wage of $5.51. Altogether in these homes there were 178 children, about 70 per cent. of whom were under twelve years; 59 per cent. of the others were forced to go to work. The wretched condition in which some of these families were found can not be depicted by means of tables.

TABLE SHOWING SOCIAL AND ECONOMIC CONDITIONS OF WIDOWS AND CHILDREN.

WIDOWS.

	Number.	Number compelled to go to work.	Per cent. of those visited.	No. compelled to work whose wages were ascertained.	Per cent. of those who worked.	Averaged weekly wages.
Widow's homes visited	86	48	55.8	38	79.2	$5.51

CHILDREN.

Ages.	Number.	Number to go to work.	Per cent.
Under 12	124	--	00
12 to 18	45	27	60
18 to 21	9	5	55
Total	178	32	--

Fifty-six per cent. of the widows visited and 18 per cent. of the children were forced to go to work to earn a livelihood as a result of the industrial accidents.

§ 45. Liability insurance statistics in Ohio.—In making settlements of 65,800 accidents covering a period of about eight years, in Cleveland, Ohio, the Aetna Liability Insurance Co. made payments of any kind in only 6 per cent. of the cases.[10]

§ 46. German statistics analyzed.—In 1887 there were insured in Germany 3,861,560 workingmen among 319,453 establishments, and the number of notices of accidents was 106,001. The German analysis of the 15,970 accidents which incapacitated workmen for more than 13 weeks shows:

That 19.76 per cent. of the 15,970 or 3,156 injuries, were attributable to the fault of the employers. That 25.64 per cent. of the 15,970, or 4,094 injuries, were attributable to the fault of the injured. That 54.60 per cent. of the 15,970, or 8,720 injuries, were attributable to the combined fault of the injured and employer, and inevitable risk when at work.[11] Thus 80.24 per cent. of 15,970, or 12,814 injuries were attributable to the fault of the employé and the inherent dangers of the industry. Now, 18.51 per cent. of these 12,814 were killed, 2,372; 17.70 per cent. of these 12,814 were totally disabled,

[10] See Report of Ohio Employers' Liability Commission, Pt. II, p. 208.

[11] Fourth Special Report of the Commission of Labor, 1893, p. 83. See also Table following page.

2,268; 50.88 per cent. of these 12,814 were partly disabled, 6,520.

CAUSES OF ACCIDENTS IN 1887.[12]

Attributable causes.	Per cent.	Number
Fault of employer:		
Insufficient apparatus for protection	10.64	1,700
Defective arrangement for carrying on business	7.03	1,122
Lack of directions or improper ones	2.09	334
Total	19.76	3,156
Fault of injured:		
Awkwardness or inattention	16.49	2,634
Disobedience to orders	5.17	825
Heedlessness	1.98	316
Failure to make use of protective apparatus	1.76	281
Unsuitable clothing	.24	38
Total	25.64	4,094
Fault of the employed and injured	4.45	711
Fault of third person, particularly a co-laborer	3.28	524
No fault which can be assigned	3.47	554
Inevitable risk when at work	43.40	6,931

Of these 12,814, 12.91 per cent. were incapacitated for a time longer than 13 weeks, 1,654.

It follows, therefore, that out of 15,970 employés whose injuries lasted more than 13 weeks, the common-law remedies would give 3,156 employés such compensation as a jury would assess after a trial and all appeals were settled.[13] But the common law does not pretend to compensate dependents of the 2,372 killed in these accidents where the cause of death could not be attributed wholly to the fault of the employer. Nor does the common law pretend to compensate the 2,268 injured workmen who were disabled for life, the fault not being attributable to the employer. Nor does the com-

[12] Fourth Special Report of the Commission of Labor, 1893, p. 88.

[13] Schonberg, Hanbuch, Vol. II, XXII, pp. 737-748.

mon law offer any remedy for compensating the 6,520 injured workmen who were partially disabled, the fault thereof not being traceable to the employer.

RESULTS OF ACCIDENTS IN 1887.

Results.	Per cent.	No.
Death	18.51	2,956
Incapacity for a time longer than 13 weeks	12.91	2,061
Lasting incapacity for work:		
Entire	17.70	2,827
Partial	50.88	8,126
Total	68.58	10,953

§ 47. Classification of causes of accidents in Germany.—A classification of the causes of accidents to 46,000 employés collected by the German imperial insurance office for the year 1907 shows the following results.[14]

1. Due to negligence or fault of employer	16.81
2. Due to joint negligence of the employer and injured employé	4.66
3. Due to negligence of co-employés (fellow servants)	5.28
4. Due to "acts of God"	2.31
5. Due to fault or negligence of employé	28.89
6. Due to inevitable accidents connected with the employment	42.05
Total	100.00

These figures grouped to correspond to those for one year, 1887 are:

1. Cause of accident attributable to employer	16.81
2. Cause of accidents attributable to employé	28.89
3. Due to the inherent risks of the business	54.30
Total	100.00

The agricultural laborers were admitted to insurance after 1887, and the act was made to cover a large additional class of less intelligent laborers.

§ 48. Miscellaneous data.—The 19,000,000 workingmen who earn on an average less than $500 per

[14] Bulletin Bureau of Labor, January, 1908.

annum, with their families, represent a population of 60,000,000 people.

Every civilized nation has decided that the product of labor of a given generation must support all during that time.[15]

Looked at from a purely commercial standpoint, that of rearing of men and women for the purpose of productive laborers, the elements of cost and waste have been studied with accurate results.

There is the rearing of the children to the age of self-support, with the result that 13 per cent die during that period; during the assumed productive life of wage earners, it is estimated that the loss from death is 25 per cent in the United States.[16] The loss through sickness is 6 per cent.[17] Then you must add the cost, in money and time, of accidents and the support of the aged.

Under these conditions, it is claimed that the contract of labor through some inadvertence is made as though sickness, accident, invalidity, and old age had been permanently banished from the earth; that the daily wage is sufficient only for daily necessities; that a man entitled to support for a lifetime unwillingly consents to a wage based upon a portion of that lifetime, for the competition in the field of labor is among the strong, the able-bodied, the efficient.[18]

We are surprised when told that Germany's poorer classes, though less favored by circumstances, maintain a higher level of well-being and far higher level of vitality than those of the United States and England.[19]

In industries outside of agriculture, for the sake of

[15] F. A. Walker, The Wage Question, p. 84.
[16] F. A. Walker, Wages, p. 35.
[17] C. S. Loch, Insurance and Savings, p. 50.
[18] A. W. Lewis, State Insurance, p. 7.
[19] A. Shodwell, Industrial Insurance, Vol. 2, p. 453.

comparison we might take $600 per annum as a minimum wage, based upon a family of five.[20]

In Massachusetts during a period of great prosperity with the necessary attendant cost of living, out of 300,000 adult workmen, only two-fifths received as much as $12 per week. Making only proper allowance for unemployment, this would amount to considerably less than $600 per year.[21] It has been said that the 18,000,000 wage earners of the United States receive an average wage of only $400 per annum.[22]

It is said that one-half of the families of the country and nine-tenths of those in the cities and industrial communities are propertyless; that in a group of States, including Massachusetts, one-fifth are in poverty;[23] that one-twentieth are paupers;[24] that one-eighth of the families hold seven-eighths and one per cent hold over one-half of the property of the country;[25] and that 71 per cent of the people hold 5 per cent of the wealth;[26] that one-eighth of the families receive over one-half of the total income; and that two-fifths of the better-paid laborers receive more than the remaining three-fifths.[27]

We can derive no comfort from the statistics of savings-bank deposits. Take Massachusetts, where there seems to be an average deposit of about $300. Investigation shows that, while far the largest number of de-

[20] J. A. Ryan, A Living Wage, p. 150.

[21] Compare Massachusetts Labor Bulletin, No. 44, December, 1906, p. 430, with thirty-seventh annual report, 1906, Massachusetts Bureau of Statistics of Labor, pp. 279-281.

[22] Address before American Association for Advancement of Science, December 27, 1906, by H. L. Call.

[23] Hunter, pp. 43-60.

[24] R. T. Ely, in North American Review, Vol. 152, p. 398.

[25] C. P. Spahr, Present Distribution of Wealth in the United States, p. 69.

[26] G. K. Holmes, in Political Science Quarterly, Vol. III, p. 593.

[27] G. K. Holmes, in Political Science Quarterly, Vol. III, pp. 128-129.

posits belong to the wage-earning class, the deposits of thirteen-fourteenths of the whole number are but slightly larger than those of the remaining one-fourteenth; that in a typical bank the average deposit of wage-earners was less than $75.[28]

In England "it took 25 years of legislation to restrict a child of 9 to 69 hours per week."[29] "It took 75 years to ascertain that the factory act, instead of weakening, had strengthened her in the world's rivalry."[30]

The assumption of any function by the State, like that of compulsory public education, is based upon higher grounds than compassion for a class. On what grounds does the State regulate the cholera, bubonic plague, and build and maintain institutions for paupers and for the insane? Why not begin higher up and prevent pauperism and assist those who do work of the nation and must fight its battles, who can not protect themselves from having an eye put out or an arm or leg cut off or their lives crushed out?

The fourth element which enters into the determination of the economic insecurity of workingmen under the modern wage system is the following: While, theoretically, injured workmen have a cause of action at law against their employers in 18.19 per cent. of the cases of injuries to them, we learn further from this table that the per cent of accidents the causes of which are attributable to the combined negligence of the employer and employé is 9.94 per cent, and from the German statistics we learn that the portion of this 9.94 per cent which is due to the negligence of fellow servants is 5.28 per cent. But in the cases which come under the fellow-servant rule the injured workmen can not recover. Sub-

[28] Massachusetts Bureau of Labor Statistics, Third Annual Report, pp. 304-313; Fourth Annual Report, p. 192.

[29] Hutchinson and Harrison, p. 21.

[30] Traill, Social England, Vol. VI, p. 825.

tracting 5.28 per cent from the 18.19 per cent there is left only 12.91 per cent of the cases in which injured workmen can theoretically recover under the common and liability laws for personal injuries received while at work. See table § 47.

§ 49. Statistical results of the per cent. of workingmen who receive compensation under the common law and liability laws.—Prior to the adoption of compulsory State insurance in Germany, under the operation of common and liability laws injured workingmen received compensation in only 10 per cent. of the cases.[81]

By reference to the preceding tables of results in the different States and making allowance for the rotting of evidence between the time of the accident and that of the trial of the case, the statistics of the practical operation of the workingman's ability to recover compensation in the United States verifies the German statistics that he can theoretically recover in from 6 to 12 per cent. of the cases.

The fifth element which enters into the determination of the "economic insecurity of workingmen under the modern wage system" is gathered from the miscellaneous data. The preceding section shows:

(a) That in the rearing of children to the age of self-support 13 per cent die during that period; (b) That in the United States during the assumed productive life of wage earners it is estimated that the loss from death is 25 per cent; (c) That the loss of wages through sickness of workingmen is 6 per cent., saying nothing about the cost of supporting the aged, etc.

Lastly, there is still the very important sixth element of the said insecurity—that is, the average compensa-

[81] Fourth Special Report of Commissioner Wright, 1893.

tion received by the dependents of a workman killed while at work under the present wage system.

Take the most favorable cases, called court cases; for example, in the Ohio table in a preceding section.[33] The average compensation received by the family of the worker in fatal cases is $949. Deducting 25 per cent for attorney fees and $212 for funeral expenses and the costs of delay of settlement, and you have a net compensation of $500. Under the Ohio law, just passed, the workman receiving the average wages of $12 per week would receive $2,400.[34] Thus the small per cent who receive any compensation under the present wage system receive on the average about one-fifth of what is regarded as a reasonably adequate compensation.

§ 50. Fundamental economic conclusions.—The foregoing statistical studies show conclusively that (and to what extent) the social and economic order of the people of the United States is gravely threatened in the permanency of its security by the economic insecurity of the workingmen which accompanies the modern wage system under the operation of the prevailing common and liability laws through which workingmen must seek compensation when they are injured in the due course of their employment.

Further, it should be said that the ultimate object of compulsory State insurance for workingmen is to conserve the normal capacity of the average worker of all the classes of workingmen and to maintain the same at the highest possible efficiency.

[33] See § 41.

[34] In the opinion of the writer the scientific and economic value to society of the statistical results which are set forth in Section 36 are, of all the economic statistics known to the writer, of the greatest importance; and that the conclusions derived by means thereof are new discoveries in the field of political economy.

§ 51. Remedies proposed—German and English plans.—The German plan of insurance against accidents had paid out $802,000,000 during the last 20 years ending in 1904. Of this total sum $555,750,000 was paid on account of sick insurance, $232,750,000 on account of accidents, and $13,500,000 on account of invalidism and old age.

To the fund necessary to make these payments the employer contributed $424,500,000. The employés contributed $377,000,000 and the Imperial Government paid a portion of the cost of administration and a small portion of the funds necessary to take care of invalidism and old age (50 marks in each case insured).

The general rules are, in respect to the raising of the insurance fund, that the employés should pay two-thirds of the fund necessary to take care of sick insurance, which lasts for 13 weeks, and the employers pay one-third. In the case of accident insurance the employers pay about 85 per cent. and the employés 15 per cent. In the case of invalidism and old-age insurance the Imperial Government pays $12.50 for each person insured, and the remainder of the fund is paid half and half by the employers and employés.

The German plan in 1907 had 27,172,000 workingmen insured against sickness, accidents, and old age out of a population of 62,000,000 people.

Now, briefly, the English plan, which in 1908 had 13,000,000 workingmen insured, is the following:

In case of death, the compensation paid is at most three years' wages, at £300, or $1,460, with a minimum payment of three years' wages at £150, or $730. In case of disability which lasts longer than one week the compensation paid is one-half week's average wage, not to exceed $4.87, as long as the disability lasts. Responsibility for the payment of the compensation rests solely on the employers, and they are not required to insure.

In both the German and English plans the rules of contributory negligence, assumption of risk, and the fellow-servant rules are abolished, and the only kind of negligence recognized is that of malicious negligence on the part of the employer or employé.

Now, the common law does not presume to furnish a plan of relief except where it can be proven that the defendant is at fault; therefore the common law does not presume to furnish any relief for something like 80 per cent of all workingmen injured and killed in the United States, and the lowest estimate of the number of persons injured and killed in the industrial accidents in 1909 is 536,000 people.

In the battle of Gettysburg, which lasted three days in actual fighting, there were killed and wounded and missing 43,500 soldiers, and if, therefore, you were to have a battle of Gettysburg in one of each of 12 divisions of the United States, one in one month, say, in the neighborhood of Boston, and the next month in the neighborhood of New York City, a third at Washington, a fourth at New Orleans, a fifth at Cincinnati, one at Pittsburgh, a seventh at Chicago, one at St. Louis, one in Minneapolis, one in Denver, one at Portland, Ore., and wind up at the end of the year at San Francisco, you would not create quite the damage and destruction which takes place in the conduct of our industries for one year; yet the common law does not pretend to furnish any relief or remedy, except in those cases in which the employer is negligent, and the best figures indicate that it does not exceed 20 per cent of all injuries, and even the part of that relief which reaches the employés is less than one-fifth of what the employers pay out to protect themselves against the liability arising out of injuries to workingmen in industrial accidents.

§ 52. Specific provision against the economic insecurity of workingmen in the United States.—Legislative agents and those best informed on the subject of compensating the workingmen injured in the due course of their employment agree that the most just and efficient remedy is that known as industrial insurance along the lines of the German plan, or a workman's compensation act along the lines of the British act.

Perhaps the most concrete illustration of the adaptation of the German plan of industrial insurance to the compensation of injured workmen now in operation in the United States is the Ohio workman's compensation act. The following statistical data is taken from the report of the experts for the Ohio commission which was prepared by Emile E. Watson, investigator in chief.[35] The facts and the Ohio law are fairly typical of the conditions and the proposed remedies in respect to industrial insurance as they exist today in the United States. They are of the highest scientific importance. The results are briefly summarized in the following paragraphs:[36]

1. (a) Under the old system the Ohio workman who was killed while at his employment got an average settlement of $958×36÷100, or $344.88.

(b) Under the new workmen's compensation plan he will receive an average settlement of $2,444.

2. (a) Under the former system the widow and the children of the injured are obliged to pay 24 per cent of this $344.88 to lawyers and to the courts. (b) Under the workmen's compensation plan they will receive all the $2,444, not having to pay a penny for attorney or court costs.

3. (a) Under the old system only 36 per cent of

[35] Report of the Employers' Liability Commission of Ohio, Pt. I, p. XXXV.

[36] See tables in §§ 41-45.

those workingmen who were killed while at their work received anything at all, leaving 64 per cent absolutely without compensation. (b) Under the workmen's compensation plan every workingman killed, not by his own wilful carelessness, or in other words, by suicide, will receive full compensation, meaning that from 80 to 95 per cent are to receive compensation.

4. (a) Under the old system, of this 36 per cent who actually received anything at all 60 per cent got somewhere between $50 and $500, and 12 per cent of those injured got more than 50 per cent of the total amount that was paid out for injuries. (b) Under the new system not only will the 80 to 95 per cent receive on an average of $2,444 each, but the difference in wages; for instance, where the workman receives a wage of $2 a day and is killed, his widow and children will receive a compensation of $2,444, whereas the widow and children of the workman who receives $3 a day will get $3,400.

5. (a) Under the old system, where the workman was killed the widow and children of the 36 per cent who got anything at all had to wait from one to five years before they got it, in which period the widow buried her husband, the wages of the husband stopped coming in on Saturday night, and the mother was forced from her home to the washtub, or the scrub rag, and part of the children were taken from school to live a life of slavery and drudgery; they were forced to live in hovels because rent was cheap there, and in this way tuberculosis and other diseases were contracted. (b) Under the workmen's compensation plan there is no delay whatever—the $2,444 (the average compensation received) being paid at once. As a rule this amount is not to be paid in a lump sum, but in the same manner as the husband received his regular weekly wage. In this way the widow will not be forced to lower the standard of living for herself and her children, and she will be

shielded from the washtub and the scrub rag and be enabled to keep her children in school until she has educated them.

6. (a) The old system results in 56 per cent of the widows and .18 per cent of the children of the injured workman going to work in order to earn a livelihood, because of the great mass who receive nothing and because of the court delay and costs involved to those who actually do receive something. (b) The workmen's compensation plan will result in not more than 10 per cent of the mothers and 4 per cent of the children going to work as a result of the death of the breadwinner, because there will be from 80 to 95 per cent who will receive compensation of a uniform nature—an average compensation of $2,444—without any costs and without any delay in securing the same.

Every employer covered by the act, who fails to come under this workmen's compensation plan is denied the protection of the fellow-servant, contributory negligence, and assumed risk doctrines.

The employé who is working under an employer who has come under the compensation plan is required to accept terms of settlement as prescribed by the compensation plan.

The State is made custodian of a fund which is created for the purpose of taking care of all claims which arise under the workmen's compensation plan. The employer contributes ninety and the employé ten per cent. of this fund.

§ 53. Argument for joint contribution by employer and employé.—The argument for making both employer and employé a party to this fund is that both parties may stand in vital relation to it, every employer will take it as his business to force the careless employer to most carefully protect his men because to the extent

that accidents are increased or diminished his premium is increased or diminished; likewise the employé, being a party to this fund, makes it his business to whip his fellow-workingmen into exercising care, because to the degree that the workingman is careless his premium is increased.

Broadly speaking, the end sought to be attained by all constitutions, statutes and court decisions is the correction of economic inequalities which arise during the process of the evolution of organized society.[37]

[37] That these new remedies do no violence to existing constitutions is well shown by Mr. Justice Marshall in his concurring opinion in the case of Borgnis v. Falk Co., 147 Wisconsin 327, 133 N. W. 224-5, which sustained the constitutionality of the Wisconsin act. He says:

"So, in short, I think the law in question is a reasonably appropriate means to effect a constitutional purpose; that the Constitution needs no bending whatever in order to sustain it in its essential features, and none would be proper if the contrary were the case.

"The foregoing I can but regard out of harmony with this, in its letter: 'Changed social, economic and governmental conditions and ideals of the time, as well as the problems the changes have produced, must largely enter into the consideration and become influential factors in the settlement of problems of construction and interpretation'—so far as it is pregnant with the thought that the fundamental law is judicially changeable. The words 'problems' of 'construction' and 'interpretation' I think were unfortunately used, if the thought was merely of problems of whether new enactments to cope with new conditions are within or without the legitimate field of legislative activity, having regard to appropriateness of means to effect a constitutional end. The latter might be, as I have suggested, at one time and not a half century theretofore, because changed conditions may render an end legitimate, within the unchangeable scope of the fundamental law, which earlier was not, or the selected means to effect that end might be reasonably appropriate at one time, though not so a century, more or less, theretofore. * * *

"True, the old remedies for losses mentioned have been inefficient and wasteful. They are, economically speaking, unscientific and have always been. It is more apparent now than formerly by reason of greater and more numerous modern activities and methods, that is all. In truth, the infirmity from an economic standpoint, and from the standpoint of man's duty to his fellowmen, has always existed, though the quantum of regrettable results and useless waste has

greatly increased by the multiplication of human activities and physical instrumentalities.

"So it will be seen, I think, that while particular means may be reasonably appropriate to a legitimate purpose under some conditions characterizing a particular period, and not have been at a prior time, no change in the Constitution is involved in remedying the misfit. The end being proper the legitimacy of means may be dependable upon conditions, the question turning more on matter of fact than anything else. The change of mere means does not require a fundamental change, so long as legitimacy of end and reasonable appropriateness of means shall be kept efficiently in view."

CHAPTER VI.

THE NEW YORK WORKMEN'S COMPENSATION ACT.

Sec.
54. New York law first construed.
55. Nature and scope of the New York act.
56. Text of the New York statute—Labor Law art. 14a.
57. Construction of the law by the Court of Appeals.
58. Argument for constitutionality of act.
59. Reasons for upholding view of court.
59a. New York General Liability Law with compensation features.

§ 54. New York law first construed.—The New York law is the first of the compensation laws to receive a construction by a court of last resort in this country.[1] The Montana law was first enacted, but its construction by the supreme court of that state was not announced until after the court of appeals of New York had spoken.

§ 55. Nature and scope of the New York act.—This statute made it compulsory on the part of the employer to pay the prescribed compensations to all workmen who should receive injuries while in the due course of their employment in any of eight specified hazardous occupations. But the employés engaged in these occupations were given the option of accepting the limited and classified compensations provided or to sue at law as they might have done prior to the passage of the act. The law recognizes no negligence on the part of the employés accepting such as is due to "the serious and wilful misconduct of the workmen." It was passed by the Legislature in 1910 and declared unconstitutional by the court of appeals on March 24th, 1911.[2]

[1] Ives v. South Buffalo Railway Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 161 n.

[2] Ives v. South Buffalo Railway Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162 n.

§ 56. Text of the New York statute—Labor Law article 14a.

Section 215. Application of article.—This article shall apply only to workmen engaged in manual or mechanical labor in the following employments, each of which is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

1. The erection or demolition of any bridge or building in which there is, or in which the plans and specifications require, iron or steel framework.

2. The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of materials in connection with the erection or demolition of such bridge or building.

3. Work on scaffolds of any kind elevated twenty feet or more above the ground, water, or floor beneath in the erection, construction, painting, alteration or repair of building, bridges or structures.

4. Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents.

5. All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry.

6. The operation on steam railroads of locomotives, engines, trains, motors or cars propelled by gravity or steam, electricity or other mechanical power, or the construction or repair of steam railroad tracks and road beds over which such locomotives, engines, trains, motors or cars are operated.

7. The construction of tunnels and subways.

8. All work carried on under compressed air.

Section 216. Definitions—The words, "employer," "workman" and "employment," or their plurals, used in this article, shall be construed to apply to all the employments above described.

Section 217. Basis of liability.—If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment after this article takes effect is caused to any workman employed therein, in whole or in part, or the damage or injury caused thereby is in whole or in part contributed to by

a. A necessary risk or danger of the employment or one inherent in the nature thereof; or

b. Failure of the employer of such workmen or any of his or its officers, agents or employés to exercise due care, or to comply with any law affecting such employment; then such employer shall, subject as hereinafter mentioned, be liable to pay compensation at the rates set out in section two hundred and nineteen-a of this title; provided that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and wilful misconduct of the workman.

Section 218. Rights of action not affected.—The right of action for damages caused by any such injury, at common law or under any statute in force on January one, nineteen hundred and ten, shall not be affected by this article, and every existing right of action for negligence or to recover damages for injuries resulting in death is continued, and nothing in this article shall be

construed as limiting such right of action, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this article, either by accepting any compensation hereunder in accordance with section two hundred and nineteen-a hereof, or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in and deemed thereby to have released every other action at common law or under any other statute on account of the same injury after this article takes effect. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this article against the employer therefor he shall be barred from all benefit of this article in regard thereto.

Section 219. Notice of accident.—No proceedings for compensation under this article shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and during such disability, but no want or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall state the name and address of the workman injured, the date and place of the accident, and in simple language the physical cause thereof, if known. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

Section 219-a. Scale of compensation.—The amount of compensation shall be in case death results from injury:

a. If the workman leaves a widow or next of kin at

the time of his death wholly dependent on his earnings, a sum equal to twelve hundred times the daily earnings of such workman at the rate at which he was being paid by such employer at the time of the injury subject as hereinafter provided, and in no event more than three thousand dollars. Any weekly payments made under this article shall be deducted in ascertaining such amount.

b. If such widow or next of kin at the time of his death are in part only dependent upon his earnings, such proportionate sum not exceeding that provided in subdivision a as may be determined according to the injury to such dependents.

c. If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars.

Whatever sum may be determined to be payable under this article in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

2. Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, equal to fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding three times the average daily earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earn-

ings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this article exceed the damage suffered, nor shall any weekly payment payable under this article in any event exceed ten dollars a week or extend over more than eight years from the date of the accident.

Section 219b. Medical examinations.—Any workman entitled to receive weekly payments under this article is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Section 219c. Incompetency of workman.—In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this article, a committee or guardian of the incompetent appointed pursuant to law may, on behalf of such

incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time in this article provided for shall run so long as said incompetent workman has no committee or guardian.

Section 219d. Settlement of disputes.—Any question which may arise under this act shall be determined either by agreement or by arbitration as provided in the Code of Civil Procedure or by an action at law as herein provided. In case the employer fails to make compensation as herein provided, the injured workman, or his committee or guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this article in any court having jurisdiction thereof, or in any court which would have had jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. This article, however, shall not be construed as extending the jurisdiction of any such court to award judgment for an amount greater than now allowed by law. Such action shall be conducted in the same manner as actions at law for the recovery of damages for negligence. The judgment in such action if in favor of the plaintiff shall be for a sum equal to the amount of payments then due and prospectively due under this article. Such action must be commenced within six months after the happening of the accident or in case of the death of the workman by such accident within six months after the appointment of his legal representative in this state, or in the event of his physical incapacity, within six months after the removal thereof, or in the event of weekly payments by the employer hereunder, within six months after such payments have ceased. In such action by an executor or administrator the judgment may provide the propor-

tions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the surrogate's court, in which such executor or administrator is appointed, in accordance with this article, on petition of any party interested on such notice as such court may direct.

Section 219-e. Preferences and exemptions.—Any person entitled to weekly payments under this article against any employer shall have the same preferential claim therefor against the assets of the employer as allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this article shall not be assignable or subject to levy, execution or attachment.

Section 219-f. Attorneys' liens.—No claim of an attorney at law for any contingent interest in any recovery under this article for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the amount of the same be approved in writing by a justice of the Supreme Court, or in case the same be tried in any court, by the justice presiding at such trial.

Section 219-g. Liability of principal contractors.—If an employer who shall be the principal enters into a contract with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, the said principal shall be liable to pay to any workman employed in the execution of the work any compensation under this article which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal then, in the application of this article, ref-

ferences to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor or employer by whom he is immediately employed. Where such principal is liable to pay compensation he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section. Nothing in this section shall be construed as preventing a workman from recovering compensation under this article from the contractor or sub-contractor, instead of the principal; nor shall this section apply in any case where the accident shall occur elsewhere than on, or in, or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

§ 57. Construction of the law by the Court of Appeals.—The statute was declared unconstitutional by the Court of Appeals in the case, Ives v. South Buffalo Railway Company.[3] This case came to the court on appeal from a judgment of the Appellate Division of the Supreme Court, in the fourth department, which affirmed a final judgment in favor of the plaintiff entered upon a decision at Special Term sustaining a demurrer to the defenses pleaded in the answer.

The complaint alleges, in substance, that on the second day of April, 1910, while the plaintiff was engaged in his work as a switchman on defendant's steam railroad, he was injured solely by reason of a necessary risk or danger of his employment; that at the time of the commencement of the action he had been totally incapacitated for labor for a period of three weeks, and that such incapacity would continue for four weeks

[3] 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162 n.

longer and demands judgment for compensation in accordance with the provisions of said act for a period of five weeks. The answer, after admitting all the allegations of the complaint, pleaded as a defense the unconstitutionality of article 14-a of the Labor Law, upon the ground that it contravenes certain provisions of the Federal and State Constitutions. The plaintiff demurred to this defense on the ground that it was insufficient in law upon the face thereof. The issue of law thus presented was tried at Special Term, where the demurrer was sustained. Final judgment was entered upon this decision, and the defendant appealed to the Appellate Division, where the judgment was affirmed by a divided court.

The opinion by Mr. Justice Werner is as follows: In 1909 the legislature passed a law (Ch. 518) providing for a commission of fourteen persons, six of whom were to be appointed by the governor, three by the president of the senate from the senate, and five by the speaker of the assembly from the assembly, "to make inquiry, examination and investigation into the working of the law in the State of New York relative to the liability of employers to employés for industrial accidents, and into the comparative efficiency, cost, justice, merits and defects of the laws of other industrial states and countries, relative to the same subject, and as to the causes of the accidents to employés." The act contained other provisions germane to the subject and provided for a full and final report to the legislature of 1910, if practicable, and if not practicable, then to the legislature of 1911, with such recommendations for legislation by bill or otherwise as the commission might deem wise or expedient. Such a commission was appointed and promptly organized by the election of officers and the appointment of sub-committees, the chairman being Senator Wainwright, from whom it has tak-

en the name of the "Wainwright Commission," by which it is popularly known. No word of praise could overstate the industry and intelligence of this commission in dealing with a subject of such manifold ramifications and of such far-reaching importance to the state, to employers and to employés. We cannot dwell in detail upon the many excellent features of its comprehensive report, because the limitations of time and space must necessarily confine us to such of its aspects as have a necessary relation to the legal questions which we are called upon to decide. As the result of its labors the commission recommended for adoption the bill which, with slight changes, was enacted into law by the legislature of 1910, under the designation of article 14-a of the Labor Law. This act is modeled upon the English Workmen's Compensation Act of 1897, which has since been extended so as to cover every kind of occupational injury. Our commission has frankly stated in its report that the classification of the industries which will be immediately affected by the present statute is only tentative, and that other more extended classifications will probably be recommended to the legislature for its action.

The statute, judged by our common-law standards, is plainly revolutionary. Its central and controlling feature is that every employer who is engaged in any of the classified industries shall be liable for any injury to a workman arising out of and in the course of the employment by "a necessary risk or danger of the employment or one inherent in the nature thereof; * * * provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and wilful misconduct of the workman." This rule of liability, stated in another form, is that the employer is responsible to the employé for every accident in the course of the employ-

ment, whether the employer is at fault or not, and whether the employé is at fault or not, except when the fault of the employé is so grave as to constitute serious and willful misconduct on his part. The radical character of this legislation is at once revealed by contrasting it with the rule of the common law, under which the employer is liable for injuries to his employé only when the employer is guilty of some act or acts of negligence which caused the occurrence out of which the injuries arise, and then only when the employé is shown to be free from any negligence which contributes to the occurrence. The several judicial and statutory modifications of this broad rule of the common law we shall further on have occasion to mention. Just now our purpose is to present in sharp juxtaposition the fundamentals of these two opposing rules, namely, that under the common law an employer is liable to his injured employé only when the employer is at fault and the employé is free from fault; while under the new statute the employer is liable, although not at fault, even when the employé is at fault, unless this latter fault amounts to serious and wilful misconduct. The reasons for this departure from our long-established law and usage are summarized in the language of the commission as follows:

"First, that the present system in New York rests on a basis that is economically unwise and unfair, and that in operation it is wasteful, uncertain and productive of antagonism between workmen and employers.

"Second, that it is satisfactory to none and tolerable only to those employers and workmen who practically disregard their legal rights and obligations, and fairly share the burden of accidents in industries.

"Third, that the evils of the system are most marked in hazardous employments, where the trade risk is high and serious accidents frequent.

"Fourth, that, as matter of fact, workmen in the

dangerous trades do not, and practically cannot, provide for themselves adequate accident insurance, and, therefore, the burden of serious accidents falls on the workmen least able to bear it, and brings many of them and their families to want."

This indictment of the old system is followed by a statement of the anticipated benefits under the new statute as follows: "These results can, we think, be best avoided by compelling the employer to share the accident burden in intrinsically dangerous trades, since by fixing the price of his product the shock of the accident may be borne by the community. In those employments which have not so great an element of danger, in which, speaking generally, there is no such imperative demand for the exercise of the police power of the state for the safeguarding of its workers from destitution and its consequences, we recommend, as the first step in this change of system, such amendment of the present law as will do away with some of its unfairness in theory and practice, and increase the workman's chance of recovery under the law. With such changes in the law we couple an elective plan of compensation which, if generally adopted, will do away with many of the evils of the present system. Its adoption will, we believe, be profitable to both employer and employé, and prove to be the simplest way for the State to change its system of liability without disturbance of industrial conditions. Not the least of the motives moving us is the hope that by these means a source of antagonism between employer and employed, pregnant with danger for the State, may be eliminated."

This quoted summary of the report of the commission to the legislature, which clearly and fairly epitomizes what is more fully set forth in the body of the report, is based upon a most voluminous array of statistical tables, extracts from the works of philosophical

writers and the industrial laws of many countries, all of which are designed to show that our own system of dealing with industrial accidents is economically, morally and legally unsound. Under our form of government, however, courts must regard all economic, philosophical and moral theories, attractive and desirable though they may be, as subordinate to the primary question whether they can be moulded into statutes without infringing upon the letter or spirit of our written constitutions. In that respect we are unlike any of the countries whose industrial laws are referred to as models for our guidance. Practically all of these countries are so-called constitutional monarchies in which, as in England, there is no written constitution, and the Parliament or law-making body is supreme. In our country the Federal and State Constitutions are the charters which demark the extent and the limitations of legislative power; and while it is true that the rigidity of a written constitution may at times prove to be a hindrance to the march of progress, yet more often its stability protects the people against the frequent and violent fluctuations of that which, for want of a better name, we call public opinion.

With these considerations in mind we turn to the purely legal phases of the controversy for the purpose of disposing of some things which are incidental to the main question. The new statute, as we have observed, is totally at variance with the common-law theory of the employer's liability. Fault on his part is no longer an element of the employé's right of action. This change necessarily and logically carries with it the abrogation of the "fellow-servant" doctrine, the "contributory negligence" rule, and the law relating to the employé's assumption of risks. There can be no doubt that the first two of these are subjects clearly and fully within the scope of the legislative power; and that as to the third,

this power is limited to some extent by constitutional provisions.

The "fellow-servant" rule is one of judicial origin engrafted upon the common law for the protection of the master against the consequences of negligence in which he has no part. In its early application to simple industrial conditions it had the support of both reason and justice. By degrees it was extended until it became evident that under the enormous expansion and infinite complexity of our modern industrial conditions the rule gave opportunity, in many instances, for harsh and technical defenses. In recent years it has been much restricted in its application to large corporate and industrial enterprises, and still more recently it has been modified and, to some extent abolished, by the Labor Law and the Employers' Liability Act.

The law of contributory negligence has the support of reason in any system of jurisprudence in which the fault of one is the basis of liability for injury to another. Under such a system it is at least logical to hold that one who is himself to blame for his injuries should not be permitted to entail the consequences upon another who has not been negligent at all, or whose negligence would not have caused the injury if the one injured had been free from fault. It may be admitted that the reason of the rule is often lost sight of in the effort to apply it to a great variety of practical conditions, and that its efficacy as a rule of justice is much impaired by the lack of uniformity in its administration. In the admiralty branch of the Federal courts, for instance, we have what is known as the rule of comparative negligence under which, when there is negligence on both sides, it is apportioned and a verdict rendered accordingly. In many of the states contributory negligence is a defense which must be pleaded and proved by the defendant, and in some states it has been entirely abrogated by

statute. In our own state the plaintiff's freedom from contributory negligence is an essential part of his cause of action which must be affirmatively established by him, except in cases brought by employés under the Labor Law, by virtue of which the contributory negligence of an employé is now made a defense which must be pleaded and proved by the employer; and under the Employers' Liability Act which provides that the employé's continuance in his employment after he has knowledge of dangerous conditions from which injury may ensue, shall not, as matter of law, constitute contributory negligence.

Under the common law the employé was also held to have assumed the ordinary and obvious risks incident to the employment, as well as the special risks arising out of dangerous conditions which were known and appreciated by him. This doctrine, too, has been modified by statute so that under the Labor Law and the Employers' Liability Act the employé is presumed to have assented to the necessary risks of the occupation or employment and no others; and these necessary risks are defined as those only which are inherent in the nature of the business and exist after the employer has exercised due care in providing for the safety of his employés, and has complied with the laws affecting or regulating the business or occupation for the greater safety of employés.

We have said enough to show that the statutory modification of the "fellow-servant" rule and the law of "contributory negligence" are clearly within the legislative power. These doctrines, for they are nothing more, may be regulated or even abolished. This is true to a limited extent as to the assumption of risk by the employé. In the Labor Law and the Employers' Liability Act, which define the risks assumed by the employé, there are many provisions which cast upon the em-

ployer a great variety of duties and burdens unknown to the common law. These can doubtless be still further multiplied and extended to the point where they deprive the employer of rights guaranteed to him by our Constitutions, and there, of course, they must stop, as we shall endeavor to demonstrate later on.

Passing now to the constitutional objections which are presented against the new statute, we will first eliminate those which we regard as clearly or probably untenable. The appellant argues and the respondent admits that the new statute cannot be upheld under the reserved power of the legislature to alter and amend charters. It is true that the defendant in the case at bar is a railroad corporation, but the act applies to eight enumerated occupations or industries without regard to the character of the employers. They may be corporations, firms or individuals. Nowhere in the act is there any reference to corporations. The liability sought to be imposed is based upon the nature of the employment and not upon the legal status of the employer. It is, therefore, unnecessary to decide how far corporate liability may be extended under the reserved power to alter or amend charters, except as that question may be incidentally discussed in considering the police power of the state.

The appellant contends that the classification in this statute, of a limited number of employments as dangerous, is fanciful or arbitrary, and is, therefore, repugnant to that part of the fourteenth amendment to the Federal Constitution which guarantees to all our citizens the equal protection of the laws. Classification, for purposes of taxation, or of regulation under the police power, is a legislative function with which the courts have no right to interfere unless it is so clearly arbitrary or unreasonable as to invade some constitutional right. A state may classify persons and objects for the purpose

of legislation provided the classification is based on proper and justifiable distinctions (St. John v. New York, 201 U. S. 633, 26 Sup. Ct. 554, 50 L. ed. 896; Missouri Pac. Ry. Co. v. Mackey, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107; Minneapolis & St. L. Ry. Co. v. Herrick, 127 U. S. 210, 8 Sup. Ct. 1176, 32 L. ed. 109; Chicago, K. & W. R. R. Co. v. Pontius, 157 U. S. 209, 15 Sup. Ct. 585, 39 L. ed. 675), and for a purpose within the legislative power. There can be no doubt, we think, that all of the occupations enumerated in the statute are more or less inherently dangerous to a degree which justifies such legislative regulation as is properly within the scope of the police power. We need not look for illustration or authority outside of the Labor Law to which this new statute has been added. The whole of that law which precedes the latest addition is devoted to restrictions and regulations imposed upon employers in specified occupations or conditions for the conservation of the health, safety and morals of employés. These restrictions and regulations do not affect all employers alike in all occupations, nor are they designed to have that effect. The mandate of the Federal Constitution is complied with if all who are in a particular class are treated alike. (Missouri Pac. Ry. Co. v. Humes, 115 U. S. 512, 523, 6 Sup. Ct. 110, 29 L. ed. 463; Barbier v. Connolly, 113 U. S. 27, 5 Sup. Ct. 357, 28 L. ed. 923; Soon Hing v. Crowley, 113 U. S. 703, 5 Sup. Ct. 730, 28 L. ed. 1145; Magound v. Illinois Trust & Sav. Bank, 170 U. S. 283, 294, 77 N. E. 970, 8 L. R. A. (N. S.) 314, 112 Am. St. 628; People ex rel. Hatch v. Reardon, 184 N. Y. 431; People ex rel. Farrington v. Mensching, 187 N. Y. 8, 16, 79 N. E. 884, 10 L. R. A. (N. S.) 625), and that, we think, is the effect of this classification.

Another objection urged against the statute is that it violates section 2 of article 1 of our State Constitution

which provides that "The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever." This objection is aimed at the provisions of sections 219-a and 219-d of the statute, which relate to the "scale of compensation" and "settlement of disputes," and has no reference to the fundamental question whether the attempt to impose upon the employer a liability when he is not at fault, constitutes a taking of property without due process of law. In other words, the objection which we are now considering bears solely upon the question whether the two last-mentioned sections of the statute deprive the employer of the right to have a jury fix the amount which he shall pay when his liability to pay has been determined against him. If these provisions relating to compensation are to be construed as definitely fixing the amount which an employer must pay in every case where his liability is established by the statute, there can be no doubt that they constitute a legislative usurpation of one of the functions of a common-law jury. In all cases where there is a right to trial by jury there are two elements which necessarily enter into a verdict for the plaintiff: 1. The right to recover. 2. The amount of the recovery. It is as much the right of a defendant to have a jury assess the damages claimed against him as it is to have the question of his liability determined by the same body. (East Kingston v. Towle, 48 N. H. 57, 97 Am. Dec. 575, 2 Am. Rep. 174; Wadsworth v. Union Pacific Ry. Co., 18 Colo. 600, 33 Pac. 515, 23 L. R. A. 812, 36 Am. St. 309; Fairchild v. Rich, 68 Vt. 202, 34 Atl. 692.) This part of the statute, in its present form, has given rise to conflicting views among the members of the court, and, since the disposition of the questions which it suggests is not necessary to the decision of the case, we do not decide it.

Thus far we have considered only such portions of the statute as we deem to be clearly within the legisla-

tive power, and one as to which there is difference of opinion. This we have done because we desire to present no purely technical or hypercritical obstacles to any plan for the beneficent reformation of a branch of our jurisprudence in which, it may be conceded, reform is a consummation devoutly to be wished. In this spirit we have called attention to those features of the new statute which might be upheld as consonant with legislative authority under our constitutional limitations, as well as to the sections upon which we are in doubt. We turn now to the two objections which we regard as fatal to its validity.

This legislation is challenged as void under the fourteenth amendment to the Federal Constitution and under section 6, article 1 of our State Constitution, which guarantee all persons against deprivation of life, liberty or property without due process of law. We shall not stop to dwell at length upon definitions of "life," "liberty," "property" and "due process of law." They are simple and comprehensive in themselves and have been so often judicially defined that there can be no misunderstanding as to their meaning. Process of law in its broad sense means law in its regular course of administration through courts of justice, and that is but another way of saying that every man's right to life, liberty and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when our constitutions were adopted. "Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting by proof every material fact which bears upon the question of right in the matter involved. If any question of fact or liability be conclusively pre-

sumed against him this is not due process of law." (Ziegler v. S. & N. Ala. R. R. Co., 58 Ala. 594.) Liberty has been authoritatively defined as "the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation" (Matter of Jacobs, 98 N. Y. 98, 106, 50 Am. Rep. 636); and the right of property as "the right to acquire, possess and enjoy it in any way consistent with the equal rights of others and the just exactions and demands of the State." (Bertholf v. O'Reilly, 74 N. Y. 509, 515, 30 Am. Rep. 323.) The several industries and occupations enumerated in the statute before us are concededly lawful within any of the numerous definitions which might be referred to, and have always been so. They are, therefore, under the constitutional protection. One of the inalienable rights of every citizen is to hold and enjoy his property until it is taken from him by due process of law. When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. That is still the law, except as to the employers enumerated in the new statute, and as to them it provides that they shall be liable to their employés for personal injury by accident to any workman arising out of and in the course of the employment which is caused in whole or in part, or is contributed to, by a necessary risk or danger of the employment or one inherent in the nature thereof, except that there shall be no liability in any case where the injury is caused in whole or in part by the serious and wilful misconduct of the injured workman. It is conceded that this is a liability unknown to the common law and we think it plainly constitutes a deprivation of liberty and property under the Federal and State Constitutions, unless its imposition can be justified under the police

power which will be discussed under a separate head. In arriving at this conclusion we do not overlook the cogent economic and sociological arguments which are urged in support of the statute. There can be no doubt as to the theory of this law. It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, who can protect himself against loss by insurance and by such an addition to the price of his wares as to cast the burden ultimately upon the consumer; that indemnity to an injured employé should be as much a charge upon the business as the cost of replacing or repairing disabled or defective machinery, appliances or tools; that, under our present system, the loss falls immediately upon the employé who is almost invariably unable to bear it, and ultimately upon the community which is taxed for the support of the indigent; and that our present system is uncertain, unscientific and wasteful, and fosters a spirit of antagonism between employer and employé which it is to the interests of the state to remove. We have already admitted the strength of this appeal to a recognized and widely prevalent sentiment, but we think it is an appeal which must be made to the people and not to the courts. The right of property rests not upon philosophical or scientific speculation nor upon the commendable impulses of benevolence or charity, nor yet upon the dictates of natural justice. The right has its foundation in the fundamental law. That can be changed by the people, but not by legislatures. In a government like ours theories of public good or necessity are often so plausible or sound as to command popular approval, but courts are not permitted to forget that the law is the only chart by which the ship of state is to be guided. Law as used in this sense means the basic law and not the very act of legislation which deprives the citizen of his rights, privileges or property.

Any other view would lead to the absurdity that the constitutions protect only those rights which the legistures do not take away. If such economic and sociologic arguments as are here advanced in support of this statute can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of legislatures, and the guarantees of the constitution are a mere waste of words. (Wynehamer v. People, 13 N. Y. 378; Taylor v. Porter, 4 Hill 140, 145, 40 Am. Dec. 274; Norman v. Heist, 5 Watts & Serg. 193, 40 Am. Dec. 493; Hake v. Henderson, 4 Dev. 15.) As stated by Judge Comstock in the case of Wynehamer v. People, "these constitutional safeguards, in all cases, require a judicial investigation, not to be governed by a law specially enacted to take away and destroy existing rights, but confined to the question whether, under the pre-existing rule of conduct, the right in controversy has been lawfully acquired and is lawfully possessed." (P. 395.) If the argument in support of this statute is sound we do not see why it cannot logically be carried much further. Poverty and misfortune from every cause are detrimental to the state. It would probably conduce to the welfare of all concerned if there could be a more equal distribution of wealth. Many persons have much more property than they can use to advantage and many more find it impossible to get the means for a comfortable existence. If the legislature can say to an employer, "you must compensate your employé for an injury not caused by you or by your fault," why can it not go further and say to the man of wealth, "you have more property than you need and your neighbor is so poor that he can barely subsist; in the interest of natural justice you must divide with your neighbor so that he and his dependents shall not become a charge upon the State?" The argument

that the risk to an employé should be borne by the employer, because it is inherent in the employment may be economically sound, but it is at war with the legal principle that no employer can be compelled to assume a risk which is inseparable from the work of the employé, and which may exist in spite of a degree of care by the employer far greater than may be exacted by the most drastic law. If it is competent to impose upon an employer, who has omitted no legal duty and has committed no wrong, a liability based solely upon a legislative fiat that his business is inherently dangerous, it is equally competent to visit upon him a special tax for the support of hospitals and other charitable institutions, upon the theory that they are devoted largely to the alleviation of ills primarily due to his business. In its final and simple analysis that is taking the property of A and giving it to B, and that cannot be done under our constitutions. Practical and simple illustrations of the extent to which this theory of liability might be carried could be multiplied ad infinitum, and many will readily occur to the thoughtful reader. There is, of course, in this country no direct legal authority upon the subject of the liability sought to be imposed by this statute, for the theory is not merely new in our system of jurisprudence, but plainly antagonistic to its basic idea. The English authorities are of no assistance to us, because in the king's courts the decrees of the Parliament are the supreme law of the land, although they are interesting in their disclosures of the paternalism which logically results from a universal employers' liability based solely upon the relation of employer and employé, and not upon fault in the employer. There are a few American cases, however, which clearly state the legal principle which, we think, is applicable to the case at bar, and with a brief reference to them we shall close this branch of the discussion. In the nitroglycer-

ine case (Parrot v. Wells, Fargo & Co., 15 Wall. 524, 21 L. ed. 206) the plaintiff, who was the common landlord of the defendants and other tenants, sought to hold the defendants liable for damages occasioned to the premises occupied by the other tenants, by an explosion of nitroglycerine which had been delivered to the defendants as common carriers for shipment. It appeared that the defendants were innocently ignorant of the contents of the packages containing the dangerous explosives, and that they were guilty of no negligence in receiving or handling them. Upon these facts the Federal Supreme Court held that it was a case of unavoidable accident for which no one was legally responsible. In Ohio & Mississippi Ry. Co. v. Lackey (78 Ill. 55, 20 Am. Rep. 259) the question was whether the railroad company was liable under a statute which provided that "every railroad company running cars within this State shall be liable for all the expense of the coroner and his inquest, and the burial of all persons who may die on the cars, or who may be killed by collision or other accident occurring to such cars, or otherwise." In speaking of the effect of that section of the law Mr. Justice Breese observed: "An examination of the section will show that no default, or negligence of any kind, need be established against the railroad company, but they are mulcted in heavy charges if, notwithstanding all their care and caution, a death should occur on one of their cars, no matter how caused, even if by the party's own hand. Running of trains by these corporations is lawful and of great public benefit. It is not claimed that the liability attaches for the violation of any law, the omission of any duty or the want of proper care or skill in running their trains. The penalty is not aimed at anything of this kind. We say penalty, for it is in the nature of a penalty, and there is a constitutional inhibition against imposing penalties where no law has

been violated or duty neglected. Neither is pretended in this case, nor are they in contemplation of the statute. A passenger on a train dies from sickness. He is a man of wealth. Why should his burial expenses be charged to the railroad company? There is neither reason nor justice in it; and if he be poor, having not the means for a decent burial, the general law makes ample provision for such cases." To the same effect are the numerous cases arising under statutes passed by different states imposing upon railroad corporations absolute liability for killing or injuring upon their rights of way horses, cattle, etc., by running over them, in which this liability was held to constitute a deprivation of property without due process of law. (Jensen v. Union Pacific Ry. Co., 6 Utah 253, 21 Pac. 994, 4 L. R. A. 724; Ziegler v. South & North Alabama Ry. Co., 58 Ala. 594; Birmingham Ry. Co. v. Parsons, 100 Ala. 662, 13 So. 602, 27 L. R. A. 263, 46 Am. St. 92; Bielingbery v. Montana Union Ry. Co., 8 Mont. 271, 20 Pac. 314, 2 L. R. A. 813; Schenk v. Union Pacific Ry. Co., 5 Wyo. 430, 40 Pac. 840; Catril v. Union Pacific Ry. Co., 2 Idaho 576, 21 Pac. 416.)

A different interpretation has been given to statutes imposing upon railroad corporations the duty to fence their rights of way, under which the liability is imposed for failure to obey the command of the statutes. (Quackenbush v. Wisconsin Ry. Co., 62 Wis. 411, 22 N. W. 519; Missouri Pac. Ry. Co. v. Humes, 115 U. S. 512, 6 Sup. Ct. 110, 29 L. ed. 463; Minneapolis & St. L. Ry. Co. v. Beckwith, 129 U. S. 26, 9 Sup. Ct. 207, 32 L. ed. 585.) "But even such statutes," says Black in his work on Constitutional Law (2d ed. p. 351), "cannot go beyond the imposition of such a penalty in cases where the fault lies at the door of the company. If the law attempts to make such companies liable for accidents which were not caused by their negligence or disobedience of the law,

but by the negligence of others or by uncontrollable causes, or does not give the company an opportunity to show these facts in its own defense, it is void."

We conclude, therefore, that in its basic and vital features the right given to the employé by this statute, does not preserve to the employer the "due process" of law guaranteed by the constitutions, for it authorizes the taking of the employer's property without his consent and without his fault. So far as the statute merely creates a new remedy in addition to those which existed before it is not invalid. The state has complete control over the remedies which it offers to suitors in its courts even to the point of making them applicable to rights or equities already in existence. It may change the common law and the statutes so as to create duties and liabilities which never existed before. It is true, as stated by Mr. Justice Brown in Holden v. Hardy (169 U. S. 366, 385, 386), that "the law is, to a certain extent, a progressive science; that in some of the states methods of procedure, which at the time the constitution was adopted were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. Even before the adoption of the constitution, much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. * * * The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to

pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the states homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the states grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority." The power of the state to make such changes in methods of procedure and in substantive law is clearly recognized. (Hurtado v. California, 110 U. S. 516, 4 Sup. Ct. 111, 292, 28 L. ed. 232; Hayes v. Missouri, 120 U. S. 68, 7 Sup. Ct. 350, 30 L. ed. 578; Missouri Pac. R. Co. v. Mackey, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107; Hallinger v. Davis, 146 U. S. 314, 13 Sup. Ct. 105, 36 L. ed. 986; Matter of Kemmler, 136 U. S. 436, 10 Sup. Ct. 930, 34 L. ed. 519; Duncan v. Missouri, 152 U. S. 377, 14 Sup. Ct. 570, 38 L. ed. 485.) We repeat, however, that this power must be exercised within the constitutional limitations which prescribe the law of the land. "Due process of law" is process due according to the law of the land, and the phrase as used in the fourteenth amendment of the Federal Constitution with reference to the power of the states means the general law of the several states as fixed or guaranteed by their constitu-

tions. As stated by Mr. Webster, in the Dartmouth College case, "the law of the land is the general law; the law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."

If we are warranted in concluding that the new statute violates private right by taking the property of one and giving it to another without due process of law, that is really the end of this case. But the auspices under which this legislation was enacted, no less than its intrinsic importance, entitle its advocates to the fullest consideration of every argument in its support, and we, therefore, take up the discussion of the police power under which this law is sought to be justified. The police power is, of course, one of the necessary attributes of civilized government. In its most comprehensive sense it embraces the whole system by which the state seeks to preserve the public order, to prevent offenses against the law, to insure to citizens in their intercourse with each other the enjoyment of their own so far as is reasonably consistent with a like enjoyment of rights by others. Under it persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the state. But it is a power which is always subject to the constitution, for in a constitutional government limitation is the abiding principle, exhibited in its highest form in the constitution as the deliberative judgment of the people, which moderates every claim of right and controls every use of power. In the language of Chief Justice Shaw, in Commonwealth v. Alger (7 Cush. (Mass.) 85): "It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries or prescribe limits to its exercise." It covers a multitude of things that are designed to protect life, limb, health, comfort, peace and property according to the maxim sic utere tuo ut alienum non

laedas, but its exercise is justified only when it appears that the interests of the public generally, as distinguished from those of a particular class, require it, and when the means used are reasonably necessary for the accomplishment of the desired end, and are not unduly oppressive. (Lawton v. Steele, 152 U. S. 133, 137, 14 Sup. Ct. 499, 38 L. ed. 385; Colon v. Lisk, 153 N. Y. 188, 196, 47 N. E. 302, 60 Am. St. 609; Wright v. Hart, 182 N. Y. 330, 75 N. E. 404, 2 L. R. A. (N. S.) 338.) In order to sustain the legislation under the police power the courts must be able to see that its operation tends in some degree to prevent some offense or evil, or to preserve public health, morals, safety and welfare. If it discloses no such purpose, but is clearly calculated to invade the liberty and property of private citizens, it is plainly the duty of the courts to declare it invalid, for legislative assumption of the right to direct the channel into which the private energies of the citizen may flow, or legislative attempt to abridge or hamper the right of the citizen to pursue, unmolested and without unreasonable regulation, any lawful calling or avocation which he may choose, has always been condemned under our form of government. Concrete illustrations of what may and what may not be done under the police power are to be found in this very Labor Law of which the new statute is a part. As this statute stood before article 14-a was added, it regulated electric work, the operation of elevators, work on scaffolds, work with explosives and compressed air, the construction of tunnels and railroad work. It regulated the hours of work in certain employments; it directed the payment of wages in cash at specified periods; it provided for the protection of employés engaged in the erection of buildings; it compelled the employer to guard dangerous and exposed machinery; to construct fire escapes and ventilating appliances; to provide toilet facilities, pure drink-

ing water and sanitary arrangements; it prohibited the employment of women, and of children under certain ages, in specified occupations; it regulated the hours of labor of minors; it modified the fellow-servant rule, the law of contributory negligence and the assumption of risks; and, in short, it imposed upon the employer many restrictions and duties which were unknown to the common law. Broadly classified, all these and similar statutory provisions which are designed, in one way or another, to conserve the health, safety or morals of the employés, and to increase the duties and responsibilities of the employer, are rules of conduct which properly fall within the sphere of the police power. (Holden v. Hardy, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. ed. 780; Missouri Pac. Ry. Co. v. Mackey, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107.) But the new addition to the Labor Law is of quite a different character. It does nothing to conserve the health, safety or morals of the employés, and it imposes upon the employer no new or affirmative duties or responsibilities in the conduct of his business. Its sole purpose is to make him liable for injuries which may be sustained wholly without his fault, and solely through the fault of the employé, except where the latter fault is such as to constitute serious and willful misconduct. Under this law, the most thoughtful and careful employer, who has neglected no duty, and whose workshop is equipped with every possible appliance that may make for the safety, health and morals of his employés, is liable in damages to any employé who happens to sustain injury through an accident which no human being can foresee or prevent, or which, if preventable at all, can only be prevented by the reasonable care of the employé himself. That this is the unmistakable theory and purpose of the act is made perfectly plain by the recital in section 215, which sets forth that from the nature, conditions or means of pro-

secution of the work in the employments which are classified as dangerous, "extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen." And to make the matter still more plain, the learned counsel for the commission argues in his brief that "if it is competent for the legislature to say to the employer in a dangerous trade, 'use the utmost care in giving your workmen safe work, so that no act of yours, or implement of yours, or work that you set them to do shall hurt them, and if you fail you shall be liable in damages,' if it is competent to make such a law, then it is equally competent to say as in this new act directly, 'you shall be responsible for all damages caused by unsafe condition of work,' and that is just what the liability for trade risks under the new act means." In this argument the learned counsel ignores, or at least misses, as we think, the vital distinction between legislation which imposes upon an employer a legal duty, for the failure to perform which he may be penalized or rendered liable in damages, and legislation which makes him liable notwithstanding he has faithfully observed every duty imposed upon him by law. At pages 46 and 47 of the report of the commissioners are quoted the several pertinent provisions of our State Constitution. (Art 1, sec. 18; art. 1, sec. 2; art. 1, sec. 1; art. 1, sec. 6.) With reference to these, the commissioners say: "It is obvious, on a mere reading, that the first section makes it impossible for the legislature to enact any law which will take away from the representatives of an injured workman the right of action there named for injuries causing death, nor can the legislature limit it in any way. It is equally obvious, it seems to us, that it was the intention of the second section of

the Constitution (Art. 1, sec. 2), to provide that in all controversies in the courts of law either side should finally have a right to a jury trial on the question of liability, and however successful or unsuccessful jury trials may be in cases of employer's liability, or in other cases, that solemn mandate of the Constitution cannot be set aside. The third and fourth sections of the Constitution above quoted are practically those which, like the fourteenth amendment of the Federal Constitution, provide for due process of law in all legislation, that is, speaking generally, which prohibit the passage by the legislature of such legislation as shall arbitrarily deprive any of the citizens of the state of life, liberty or property."

These are interesting and salient admissions, but the ease with which these constitutional provisions are brushed aside is startling. Continuing, the commissioners say: "But we regard it as settled that the legislature has power, if it so chooses, to change or abrogate the common law on employer's liability, or the Employers' Liability Act, or any other statutes in regard thereto. * * * The legislature of this state, in the exercise of its general powers, * * * has in the past so legislated as to prescribe that employers in New York industries, shall conduct their business, use their machines and use their property in such ways as shall conduce to the safety of the employés and the prevention of accident and disease. Such is the whole purpose of the Labor Law. * * * We are of opinion that it is competent for the legislature to take a further step and provide conditions of the carrying on of such dangerous industries—not at the moment conditions as to the method of carrying them on—but conditions providing that any man in the state who carries on such dangerous trades shall be liable to make compensation to the employés injured either by the fault of the employer, or by those unavoidable risks of the employ-

ment. The effect of such a statute would be to reverse the common-law doctrine that the employé assumes the risk of his employment."

With all due respect to the members of the commission we beg to observe that the statute enacted in conformity with their recommendations, does not stop at reversing the common law; it attempts to reverse the very provisions of the Constitution which, the commissioners admit, are obviously beyond the reach of the legislature. We cannot understand by what power the legislature can take away from the employer a constitutional guaranty of which the employé may not also be deprived. If it is beyond the power of the legislature to take from the representatives of deceased employés their rights of action under the Constitution, by what measure of power or justice may the legislature assume to take from the employer the right to have his liability determined in an action at law? Conceding, as we do, that it is within the range of proper legislative action to give a workman two remedies for a wrong, when he had but one before, we ask, by what stretch of the police power is the legislature authorized to give a remedy for no wrong? If, before the passage of this law, the employer had a right to a jury trial upon the question of liability, where and how did he lose it? Can it be taken from him by the mere assertion that this statute only reverses the common-law doctrine that the employé assumes the risk of his employment? It would be quite as logical and effective to argue that this legislation only reverses the laws of nature, for in everything within the sphere of human activity the risks which are inherent and unavoidable must fall upon those who are exposed to them. We must admit that what the legislature may prohibit it may absolutely control. Where the right to exist, as in case of corporations, depends upon the will of the legislature, that right may be grant-

ed subject to prescribed conditions. In such a case an employer may be made an insurer of the safety of his employés as a condition of the permission to engage in business. But when an industry or calling is per se lawful and open to all, and, therefore, beyond the prohibitive power of the legislature, the right of governmental control is subject to such reasonable enactments as are directly designed to conserve health, safety, comfort, morals, peace and order. (Lochner v. New York, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. ed. 937.) For the failure of an employer to observe such regulations the legislature may unquestionably enact direct penalties or create presumptions of fault which, if not rebutted by proof, may be regarded as sufficient evidence of liability for damages. That must be the extreme limit of the police power, for just beyond is the Constitution which, in substance and effect, forbids that a citizen shall be penalized or subjected to liability unless he has violated some law or has been guilty of some fault.

The limitations of the police power are illustrated in a great variety of cases. In Matter of Jacobs (98 N. Y. 98, 99, 50 Am. Rep. 636), it was held that an act was void which made it a misdemeanor to manufacture cigars or prepare tobacco in certain tenements. In People v. Marx (99 N. Y. 377, 2 N. E. 29, 52 Am. Rep. 34), this court condemned an act absolutely prohibiting the manufacture or sale of oleomargarine, upon the ground that it interfered with a lawful industry, not injurious to the public and not fraudulently conducted, although in a later case (People v. Arensberg, 105 N. Y. 123, 11 N. E. 277, 59 Am. Rep. 483), another statute relating to the same subject was upheld because it was directly aimed at a designed and intentional imitation of dairy butter. In People v. Gillson (109 N. Y. 389, 404, 17 N. E. 343, 4 Am. St. 465) it was held that a statute was not within the police power which prohibited the sale or dis-

posal of any article of food upon any representation or inducement that anything else will be delivered as a gift, prize, premium or reward to the purchaser. The ground of the decision was that it was not a health law; that it was not designed to prevent the adulteration of food, and that it was not in the power of the legislature to convert an innocent act into a crime. In Colon v. Lisk (153 N. Y. 188, 47 N. E. 302, 60 Am. St. 609) the statute under consideration provided for the summary seizure of any boat or vessel, used by one person in interfering with the oysters or shell fish of another, and for its forfeiture and sale. It was held that the statute sanctioned an unauthorized confiscation of private property for the mere protection of private rights and was not within the police power of the state. In People v. Hawkins (157 N. Y. 1, 51 N. E. 257, 68 Am. St. 736, 42 L. R. A. 490) this court decided that a statute was void which made it a misdemeanor to sell or expose for sale any goods made in a penal institution unless they were labeled "convict made." In People v. Orange County Road Com. Co. (175 N. Y. 84, 67 N. E. 129, 65 L. R. A. 33) it was held that the state cannot dictate to independent contractors on state work the hours of labor which they shall prescribe for their employés, where there was nothing in the character of the work or in the provisions of the contract to justify legislative interference. In Beardsley v. N. Y., L. E. & W. R. R. Co. (162 N. Y. 230, 56 N. E. 488) what is known as the "Mileage Book Act," which required railroad companies to issue mileage books and provided a penalty for refusal, was unconstitutional as to railroad corporations in existence at the time of its enactment, because it was an illegal invasion of the vested property rights of such corporations. In Schnaier v. Navarre Hotel & I. Co. (182 N. Y. 88, 74 N. E. 561, 108 Am. St. 790, 70 L. R. A. 722) the court pronounced invalid a statute which pro-

vided that it should be unlawful for a copartnership to engage in the business of employing a master plumber unless each and every member thereof shall have registered, after examination and certification by an examining board of plumbers. In People v. Marcus (185 N. Y. 257, 77 N. E. 1073, 13 Am. St. 902, 7 L. R. A. (N. S.) 282), it was held that a section of the Penal Code was void which provided, in substance, that no person shall make the employment of another, or the continuance of such employment, conditional upon the employé's not joining or becoming a member of a labor organization. In People v. Williams (189 N. Y. 131, 134, 81 N. E. 778, 121 Am. St. 854, 12 L. R. A. (N. S.) 1130), this court condemned that part of the Labor Law which prohibited the employment of an adult female in a factory before six o'clock in the morning or after nine o'clock in the evening, and held that it was not a proper exercise of the police power, since it had no reference to the number of hours of labor or to the healthfulness of the employment.

We have yet to consider certain special cases upon which the exponents of this new law have planted their faith and hope, and these run along such divergent lines as to indicate, more clearly than anything else, the absence of any sound legal theory upon which this legislation can be sustained. These cases are cited in support of the contention that the common law and our statutes furnish many illustrations of legal liability without fault, but we shall endeavor by analysis to show how inapplicable they are to the questions now before the court. The case of Marvin v. Trout (199 U. S. 212, 224, 26 Sup. Ct. 31, 34, 50 L. ed. 157) arose under an Ohio statute which subjected premises used for gambling to a lien for money lost in gambling. The statute forbade gambling, and the court very properly argued that "The power of the state to enact laws to suppress gambling

cannot be doubted, and, as a means to that end, we have no doubt of its power to provide that the owner of the building in which gambling is conducted, who knowingly looks on and permits such gambling, can be made liable in his property which is thus used, to pay a judgment against those who won the money, as is provided in the statute. * * * The liability of the owner of the building to make good the loss sustained, under the circumstances set forth in the statute, was clearly part of the means resorted to by the legislature for the purpose of suppressing the evil in the interests of the public morals and welfare." (P. 224.) A more cogent illustration of the undoubted application of the police power cannot be found. In the interest of good morals it is not merely the right but the duty of the state to suppress gambling, and the case, so far from being an authority for the idea of liability without fault, proceeds directly upon the theory that the owner was at fault in permitting his premises to be used for an illegal purpose. Then there is the case of Bertholf v. O'Reilly (74 N. Y. 509, 30 Am. Rep. 323), in which this court upheld the so-called "Civil Damage act" which gave to every husband, wife, parent, guardian, employer or other person who should be injured in person or property or means of support by any intoxication of any person, a right of action against any person who by selling or giving away intoxicating liquors caused the intoxication, in whole or in part, and subjecting to the same liability any person or persons owning or renting or permitting the occupation of any building or premises with knowledge that intoxicating liquors were to be sold thereon. In that case, as in the case of Marvin v. Trout (supra), the controlling principle was that the state had the right to prohibit and, therefore, the absolute right to control. As Judge Andrews pertinently observed, "the right of the state to regulate the traffic in intoxicating liquors, with-

in its limits, has been exercised from the foundation of the government, and is not open to question. The state may prescribe the persons by whom and the conditions under which the traffic may be carried on. It may impose upon those who act under its license such liabilities and penalties as in its judgment are proper to secure society against the dangers of the traffic and individuals against injuries committed by intoxicated persons under the influence of or resulting from their intoxication." (P. 517.) The defendant in that case, it is true, was not the licensee, but he had rented his premises for the traffic in intoxicating liquors knowing that they were to be so used. Upon that feature of the case Judge Andrews said: "The liability imposed upon the landlord for the acts of the tenant is not a new principle in legislation. His liability only arises when he has consented that the premises may be used as a place for the sale of liquors. He selects the tenant, and he may, without violating any constitutional provision, be made responsible for the tenant's acts connected, with the use of the leased property." (P. 525.) That is very far from being a case of liability without fault. The enactment of the "Civil Damage Act" was clearly within the police power, and the liability imposed did not deprive either the tenant or the landlord of "due process of law," for each had the right to his day in court and an opportunity to disprove the facts upon which the statutory right of action depended. Let us suppose, however, that the statute had gone so far as to provide that the mere fact of selling liquor by the tenant, or the mere fact of renting the premises for that purpose by the landlord, should be deemed conclusive proof of the intoxication of the person to whom the liquor was sold, and of the fact that the person bringing the suit had suffered injury thereby, so that the person sued could not be heard to deny or disprove his responsibility for the intoxi-

cation or the injuries resulting therefrom. Would that be "due process of law?" Suppose that the Ohio statute, which was also clearly within the general scope of the police power, had imposed upon the landlord a liability for money lost in gambling on his premises without his knowledge of the purpose for which the building was used, and had declared that evidence of the mere loss of the money should be sufficient to sustain a judgment against him. That would clearly be a case of liability without fault; but what court, controlled by constitutional limitations, would render such a judgment? We are referred to the case of Chicago, Rock Island & Pacific Railway Co. v. Zernecke (183 U. S. 582, 22 Sup. Ct. 229, 46 L. ed. 339) as an illustration of liability without fault. We think that case has no analogy to the case at bar. There a statute of Nebraska imposed upon railroad corporations a liability for all injuries to passengers except when occasioned by the criminal negligence of the person injured, or when the injury was sustained in the violation of some express rule or regulation of the corporation. The point decided in that case was that this rule of liability was a part of the very statute under which the corporation took its charter. The defendant in the case at bar is a railroad corporation, and as such may be subject to state regulations which would not apply to other corporations or to individuals, but we are not now concerned with that question, since the statute before us has reference to employers in their relations with their employés, and not to railroads in their service to the public.

In support of this new statute we are also asked to consider the supposed analogies of the law of deodands; the common-law liability of the husband for the torts of his wife; the liability of the master for the acts of his servant, and the liability of a ship for the care and maintenance of sick or disabled seamen. From the historical

point of view, these subjects might be very entertainingly elaborated, but for the practical purposes of this discussion they may be very briefly disposed of. If the law of deodands was ever imported into this country it has never, to our knowledge, found expression in a single statute or judicial decision. It was one of those primitive conceptions of justice under which a chattel which caused the death of a human being was forfeited to the king. We are unable to see what bearing it can have upon the question whether, under our Constitutions, it is due process of law to render a man liable for damages when he has been guilty of no fault. Quite as far-fetched seems the argument based upon the common-law liability of the husband for the torts of his wife. Under the common-law unity of husband and wife, the latter was presumed to act under the compulsion of the former; and the wife could never be sued alone. As the marriage vested the husband with the personal property of the wife, it was simply logical that he should pay her obligations. So with the liability of the master for the acts of his servant, the whole theory is expressed in the maxim qui facit per alium facit per se. He who acts through another acts himself. How do these illustrations support the principle of liability without fault? Could a husband or master be held liable under the common law when the wife or servant had been guilty of no wrong? Would the common law have denied to the husband or master the right to provide that no tort had been committed by the wife or servant? The admiralty cases of The Osceola (189 U. S. 158, 23 Sup. Ct. 483, 47 L. ed. 760), The City of Alexandria (17 Fed. 399), and the case of Scarff v. Metcalf (107 N. Y. 211, 13 N. E. 796, 1 Am. St. 807) seem to us equally inapplicable as authorities for the proposition that the law recognizes liability without fault. It is common knowledge that the contracts and services of seamen are exceptional in

character. A seaman engages for the voyage. He is subject to physical discipline, and exposed to hardships and dangers peculiar to the sea. He is, in effect, a co-adventurer with the master, and shares in the risks of shipwreck and capture, often losing his wages by casualties which do not affect workmen on land. For these and many other obvious reasons the maritime law has wisely and benevolently built up peculiar rights and privileges for the protection of the seaman which are not recognizable in the common law. When he is sick or injured he is entitled to be cared for at the expense of the ship, and for the failure of the master to perform his duty in this regard, the ship or the owner is liable. That is a right given to the seaman, and a duty enjoined upon the master, by the plainest dictates of justice, which arises out of the necessities of the case; and, because of the reason of the rule, the right and duty cease when the contract has terminated and the seaman has been returned to the port of shipment or discharge, or has been furnished with means to do so. But beyond this duty on the part of the master or owner, there seems to be no liability whatever for injuries sustained by the seaman in the course of his work. We think it may confidently be asserted that within the whole range of the maritime law there will be found no rule which renders master, owner or ship liable in damages for an injury sustained by the seaman without fault on the part of any one, or without any fault except his own. The case of Scarff v. Metcalf (107 N. Y. 211, 13 N. E. 796, 1 Am. St. 807) was not disposed of upon any such theory, but was based upon the neglect of the master to perform the duty of caring for the injured seaman imposed by the maritime law. The legal status of seamen is clearly illustrated in the case of Robertson v. Baldwin (165 U. S. 275, 17 Sup. Ct. 326, 41 L. ed. 715), where it was held that compulsory personal service of a seaman

in performance of his contract was not a violation of the thirteenth amendment to the Federal Constitution forbidding slavery or involuntary servitude. In that case the learned justice who wrote for the court suggested that enforced service under a seaman's contract was not involuntary within the Constitution, although the contract would not be enforced by the courts. But in the later case of Clyatt v. United States (197 U. S. 207, 25 Sup. Ct. 429, 49 L. ed. 726) it was held that peonage or enforced service, whether under a voluntary contract of service or not, was involuntary servitude and forbidden by the Constitution in all cases save those arising out of the exceptional relations of the seaman to his ship, the child to its parents, and the apprentice to his master. In the review in Robertson v. Baldwin (supra), of the various decisions in admiralty, it is made quite clear that the courts have always regarded seamen as irresponsible to a degree which makes them incapable of fully protecting their own rights. With the power given to the employer of seamen to compel specific performance of their contracts, there are imposed certain obligations unknown to any other relation. It is a relation which rests on affirmative law and not on natural right. We can find no analogy between a case arising out of such a relation and one in which an adult of sound mind and capable of freely contracting for himself voluntarily enters upon employment from which he is at liberty to withdraw whenever he will.

Great reliance is placed upon the case of St. Louis & San Francisco Ry. Co. v. Mathews (165 U. S. 1, 17 Sup. Ct. 243, 41 L. ed. 611) in support of the contention that there may be liability where there is no delinquency. That was an action brought by an owner of land adjoining the defendant's railroad to recover damages for the destruction of his dwelling house and other buildings, caused by fire which spread from sparks emit-

ted by the defendant's locomotives. The action was brought under a statute of the state of Missouri which provided that "each railroad corporation, owning or operating a railroad in this state, shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated, directly or indirectly, by locomotive engines in use upon the railroad owned or operated by such railroad corporation; and each such railroad corporation shall have an insurable interest in the property upon the route of the railroad owner or operated by it, and may procure insurance thereon in its own behalf, for its protection against such damages." The statute was upheld as being within the legislative power of the state. That decision is amply supported by a number of reasons which have no application to the controversy at bar. To begin with, the Constitution of Missouri contained a clause, which was in force when the railroad company obtained its charter, providing that "the exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the state." (Missouri Const., art. 12, sec. 5.) Another ample reason is found in the fact that railroads alone "have the privilege of taking a narrow strip of land from each owner, without his consent, along the route selected for the track, and of traversing the same at all hours of the day and night, and at all seasons whether wet or dry, with locomotive engines that scatter fire along the margin of the land not taken, thereby subjecting all combustible property to extraordinary hazard of loss." (Grissell v. Housatonic R. R. Co., 54 Conn. 447, 9 Atl. 137, 1 Am. St. 138.) Then, again, "the right to use the agencies of fire and steam in the movement of trains is derived from legislation of the state; and it certainly cannot be denied that

it is for the state to determine what safeguards must be used to prevent the escape of fire, and to define the extent of the liability for fires resulting from the operation of trains by means of steam locomotives. This is a matter within state control." (Hartford Ins. Co. v. Chi., Mil. & St. Paul Ry. Co., 62 Fed. 904.) A legislature may, if it chooses, make it a condition of the right to run carriages propelled by the agency of fire, that the corporation employing them shall be responsible for all injuries which fire may cause. (Ingersoll & Quigley v. Stockbridge & Pittsfield R. R. Co., 8 Allen 438; Grand Trunk Ry. Co. v. Richardson, 9 U. S. 454, 23 L. ed 356.) And, finally, these statutes are designed to protect the rights of those who have no contractual relations to the corporations which inflict the injury. In such a case, when both parties are equally faultless, the legislature may properly consider it to be just that the duty of insuring private property against loss or injury caused by the use of the dangerous instruments should rest upon the railroad company, which employs the instruments and creates the peril for its own profit, rather than upon the owner of the property who has no control over or interest in these instruments. Quite aside from the considerations which support such a statutory liability against railroad corporations, it may be added that it is in no sense an extension of the rule of the common law to modern conditions, but in reality a return to the original common-law doctrine under which every person who permitted fire started by him to escape beyond his house or close was liable to every one who suffered loss or injury thereby. The severity of that early English rule was moderated by numerous statutes, among which are 6 Anne and 14 Geo. III. As to these two last-mentioned statutes it has been held that they became by adoption a part of the common law of this state (Thompson's Negligence, vol. 1, p. 148 et seq., notes under "Lia-

bility for Damages by Fire," and Webb v. R., W. & O. R. R. Co., 49 N. Y. 420, 426, 10 Am. Rep. 389), under which neither individuals nor corporations are liable for escaping fire unless there is negligence. (Clark v. Foot, 8 Johns. 421; Bennett v. Scutt, 18 Barb. 347, 349; Stuart v. Hawley, 22 Barb. 619, 621; Radcliff's Exrs. v. Mayor, etc., of Brooklyn, 4 N. Y. 195, 200, 53 Am. Dec. 357; Calkins v. Barger, 44 Barb. 424; Sheldon v. Hudson R. R. R. Co., 14 N. Y. 219, 67 Am. Dec. 155; Steinweg v. Erie Ry., 43 N. Y. 123, 127, 3 Am. Rep. 673.) The cited cases arising out of injuries inflicted by animals of known dangerous or vicious propensities, and the liability which has often been imposed for the maintenance of private nuisances, we shall not discuss, for we think they are governed by well-settled principles which clearly have no application to the questions now before us.

In the addenda to the instructive brief of the counsel for the commission our attention is called to three decisions of the Federal Supreme Court which have been but recently decided and not yet officially reported. (Noble State Bank v. Haskell, 219 U. S. 104, 31 Sup. Ct. 186, 55 L. ed. 112); Assaria State Bank v. Dolley, 219 U. S. 121, 31 Sup. Ct. 189, 55 L. ed. 123), and Engel v. O'Malley, 219 U. S. 128, 31 Sup. Ct. 190, 55 L. ed. 128.) These cases, it is contended, strongly support the validity of the legislation which we are condemning because, as counsel asserts, they go directly to the ultimate question: "Is the act an unreasonable regulation of the status of employment?" We have tried to make it clear that in our judgment this statute is not a law of regulation. It contains not a single provision which can be said to make for the safety, health or morals of the employés therein specified, nor to impose upon the enumerated employers any duty or obligation designed to have that effect. It does not affect the status of employment at all, but writes into the

contract between the employer and employé, without the consent of the former, a liability on his part which never existed before and to which he is permitted to interpose practically no defense, for he can only escape liability when the employé is injured through his own wilful misconduct. That is a defense which needs no legislative sanction, since it would be abhorrent to the most primitive notions of justice to permit one to impose liability for his wilfully self-inflicted injuries upon another who is wholly free from responsibility for them. The case of Engel v. O'Malley (supra) is so clearly distinguishable from the case at bar that we need only state the facts to mark the contrast. The Engel case arose under a New York statute which provides that individuals and firms shall not engage in the business of receiving deposits for safe-keeping or for transmission, or for any other purpose, or in the business of banking, without first obtaining from the state comptroller a license. The same statute further provides that applicants for such a license must pay a prescribed fee, give bonds and submit to other restrictions. We have already passed upon the constitutionality of certain parts of that statute (Laws 1907, ch. 185) in Musco v. United Surety Co. (196 N. Y. 459, 465, 90 N. E. 171, 173, 134 Am. St. 851), which was an action upon a bond given under it, and have held that "the regulation of the business of receiving deposits is plainly within the power possessed by the state to regulate the conduct of various pursuits when necessary for the protection of the public." (P. 465.) The portion of the statute under consideration in the last cited case was plainly directed against an obvious evil which vitally affected the public welfare. The city of New York is the gateway through which this country admits each year thousands of poor and ignorant immigrants who deal with individuals and firms engaged in the business of exchanging domestic for for-

eign money, receiving deposits and transmitting remittances to foreign ports. It is a business which may, and probably does, attract some irresponsible and mercenary adventurers. A law designed to regulate and safeguard such a business in a way which affects no constitutional property rights, is plainly within the police power of the state. That is all that was involved in the Musco case, and that is the extent to which this court has passed upon the constitutionality of the New York statute (Laws 1907, ch. 185). It need hardly be argued that a law passed under the guise of such a purpose, but having in fact no relation to it, and accomplishing nothing to make the business of receiving deposits more safe, would be as far beyond the sphere of the police power as an amendment to the Banking Law requiring banks and bankers to protect their customers, to whom they pay moneys, against thefts or other physical losses thereof; or an amendment to the Labor Law which would compel the industrial employers to give each employé a vacation on full pay during two months of every year.

As to the cases of Noble State Bank v. Haskell (219 U. S. 104, 31 Sup. Ct. 186, 55 L. ed. 112) and Assaria State Bank v. Dolley (219 U. S. 121, 31 Sup. Ct. 189, 55 L. ed. 123) we have only to say that if they go so far as to hold that any law, whatever its effect, may be upheld because by the "prevailing morality" or the "strong and preponderant opinion" it is deemed "to be greatly and immediately necessary to the public welfare," we cannot recognize them as controlling of our construction of our own Constitution. That the business of banking in the several states may be regulated by legislative enactment is too obvious for discussion. That the extent to which such state regulation may be carried must depend upon the difference in constitutional provisions is also plain. How far these late decisions of the Federal Supreme Court are to be regarded as committing that tribunal

to the doctrine that any citizen may be deprived of his private property for the public welfare we are not prepared to decide. All that it is necessary to affirm in the case before us is that in our view of the Constitution of our state the liability sought to be imposed upon the employers enumerated in the statute before us is a taking of property without due process of law, and the statute is, therefore, void.

The judgment of the Appellate Division should be reversed and judgment directed for the defendant, with costs in all courts.

Cullen, Ch. J., Gray, Haight, Willard Bartlett, Chase and Collin, JJ., concur; Cullen, Ch. J., also files an opinion, with whom Willard, Bartlett, J., concurs.

Judgment reversed, etc.

A concurring opinion was written by Chief Justice Cullen, in which he said:

I concede that the legislature may abolish the rule of fellow-servant as a defense to an action by employé against the employer. Indeed, we have decided that in upholding the so-called Barnes Act (Schradin v. N. Y. C. & H. R. R. R. Co., 194 N. Y. 534, 87 N. E. 1126.) I concede that the legislature may also abolish as a defense the rule of assumption of risk and that of contributory negligence unless the accident proceed from the wilful act of the employé. I concede that in a work, occupation or business of such a nature that the legislature might prohibit its pursuit or exercise altogether, the legislature may prescribe terms under which it may be carried on. Plainly, this litigation does not present such a case. The legislature could not revoke the franchise it had previously given to the defendant to operate a railroad. (People v. O'Brien, 111 N. Y. 1, 18 N. E. 692, 7 Am. St. 68, 2 L. R. A. 255,) I am not prepared to deny that where the effects of the work, even though prosecuted carefully, go beyond a person's own

property and injure third persons in no way connected therewith, the person for whose account the work is done may be held liable for injuries occasioned thereby. I also concede the most plenary power in the legislature to prescribe all reasonable rules for the conduct of the work which may conduce to the safety and health of persons employed therein. But I do deny that a person employed in a lawful vocation, the effects of which are confined to his own premises, can be made to indemnify another for injury received in the work unless he has been in some respects at fault. I am not impressed with the argument that "the common law imposed upon the employé entire responsibility for injuries arising out of the necessary risks or dangers of the employment. The statute before us merely shifts such liability upon the employer." It is the physical law of nature, not of government, that imposes upon one meeting with an injury, the suffering occasioned thereby. Human law cannot change that. All it can do is to require pecuniary indemnity to the party injured, and I know of no principle on which one can be compelled to indemnify another for loss unless it is based upon contractual obligation or fault. It might as well as argued in support of a law requiring a man to pay his neighbor's debts, that the common law requires each man to pay his own debts, and the statute in question was a mere modification of the common law so as to require each to pay his neighbor's debts. It is urged that the legislation before us can be upheld on the decision of the Supreme Court of the United States in Noble State Bank v. Haskell (219 U. S. 104, 111, 31 Sup. Ct. 186, 188, 55 L. ed. 112.) In support of the claim there is cited from the opinion the following: "It may be said in a general way that the police power extends to all the great public needs. (Camfield v. United States, 167 U. S. 518, 17 Sup. Ct. 864, 42 L. ed. 260.) It may be put forth in aid of

what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare." (P. 111.) It is here possible that the doctrine of these two sentences would justify the statute before us and possibly any legislation, if only supported by a sufficient popular demand, but it is both unfair and unsafe to exempt fragmentary sentences from the opinion of a court and interpret them apart from the context of the whole opinion. However that may be, the decision in the Noble Bank case is not controlling upon this court in the construction of the Constitution of our own state, and I am not disposed to accept it, at least, until it has received the approval of a majority of the court. I concur with Judge Werner that the act, as applicable to the case before us, cannot be considered as an exercise of the power of the state to regulate corporations. The act is general, not confined to corporations, and even if it were, I think its effect would be a deprivation of property not authorized by the reserved power to regulate.

As to corporations hereafter formed, the question is very different. The franchise to be a corporation is not one inherent in the citizen, but proceeds solely from the bounty of the legislature, and for that reason the legislature may dictate the terms on which it will be granted and require the acceptance of the provisions of this act as a condition of incorporation. (Purdy v. Erie R. R. Co., 162 N. Y. 42, 56 N. E. 508, 48 L. R. A. 669; Minor v. Erie R. R. Co., 171 N. Y. 566, 64 N. E. 454; People ex rel. Schurz v. Cook, 110 N. Y. 443, 18 N. E. 113; 148 U. S. 397, 13 Sup. Ct. 645, 37 L. ed. 498; Chicago, R. I. & Pac. R. Co. v. Zernecke, 183 U. S. 582, 22 Sup. Ct. 229, 46 L. ed. 839. Even in the case of existing corporations, the corporate existence of all those created since the Constitution of 1846 may be revoked by the legislature,

though the property rights of such corporations and their special franchises other than the one to be a corporation, can not be impaired. (Const., art. VIII, § 1; Lord v. Equitable Life Assur. Socy., 194 N. Y. 212, 87 N. E. 443, 22 L. R. A. (N. S.) 420.) The property and franchise would have to be managed by the owners as partners or tenants in common, and the legislature might require as a condition of the continued right to be a corporation that before the expiration of a reasonable period the provisions of the statute should also be accepted by them. They are in the condition of a tenant at will who, when the landlord raises the rent, must either comply with his terms or, after the expiration of a reasonable time prescribed by a notice to quit, surrender his rights under the lease. But individual citizens, following the ordinary vocation of life, asking no favors of the government, whether a corporate or other franchise, but only the protection of life and property, which every government owes to its citizens, and guilty of no fault, can not be compelled to contribute to the indemnity of other citizens who, by misfortune or the fault of themselves or others, have suffered injuries, except by the exercise of the power of taxation imposed on all, at least all of the same class, for the maintenance of public charity. Of course, I am not now referring to obligations springing from domestic relations.

Cullen, Ch. J., Gray, Haight, Willard, Bartlett, Chase and Collin, JJ., concur; Cullen, Ch. J., also files an opinion, with whom Willard, Bartlett, J., concurs.

Judgment reversed, etc.

§ 58. Argument for constitutionality of act.—The argument of former President Roosevelt, the Wainwright Commission, The Outlook and those who have contended for the constitutionality of the New York Workmen's Compensation Law is, perhaps, best stated

by James Parker Hall, Dean of the University of Chicago Law School.[4] The fundamental ground on which the New York Court based its decision against the constitutionality of the act was that it authorized the taking of the property of the employer "without due process of law" in violation of Fourteenth Amendment to the Federal constitution and a similar provision in the constitution of the state. Professor Hall argues that the act does not take the property of the employer "without due process." He says:

"Carriers and inkeepers (not protected by special contract) are liable for goods destroyed without their fault; the possessors of animals must keep them from straying at their peril; the husband was absolutely liable for the torts of his wife and the master for those of his servant (within the scope of his authority), no matter how carefully the servant was selected and instructed; the person who had custody of a fire was liable for its spread, regardless of fault (until the rule was altered by statute); those who keep dangerous explosives do so at their peril; the ship is liable for the care of sick and injured sailors; persons who conduct blasting operations do so at their peril as regards trespasses caused thereby; one who digs in his land is absolutely liable for changes thus caused in the surface of a neighbor's land, no matter how unforeseeable; a landowner must keep his land free from nuisances, even those created there by strangers against his will and without his fault; in some jurisdictions one who brings on his land and keeps there anything likely to escape and do damage (like a reservoir of water) is liable therefor, even though the escape be without his fault; and one who diverts the flow of surface water may be held liable if, even without his fault, his neighbor is flooded thereby. In addition to the

[4] Journal of Political Economy, Vol. XIX, No. 8, October, 1911, pp. 698-700.

above, which, as regards the defendant, are all in principle cases of accidental injury without fault, there is the great class of injuries caused by mistake, without fault, as where one meddles with the person or property of another, reasonably and in good faith thinking he has a right to do so, when he has not. No fault of any kind can be imputed to the defendant, but he is everywhere held liable.

Statutes, too, have not infrequently imposed liabilities without fault. Owners of dogs have been made absolutely liable for damages done by them; drivers of cattle have been made liable for injuries to roads; railroads have been made liable for the unavoidable escape of fire; it has been said carriers could be made absolutely liable for injuries to passengers arising from the operation of railroads; and banks have been compelled to contribute toward each other's losses. Several state courts have held unconstitutional laws making railways absolutely liable for stock killed on the track, but a contrary view of this is apparently held by the United States Supreme Court. Similar in principle seem to be the important classes of cases where persons are liable who, though wholly without fault, fail to avoid some condition or result penalized by the law. Instances are statutes absolutely requiring milk offered for sale to meet a certain test, or railroads to have their car couplings in a safe condition. It is no defense that a cow's milk unforeseeably falls below the test, or that a coupling unexpectedly becomes disabled between stations.

In the face of so large a number of instances of liability without fault under our system of law, it can not be successfully argued that a statute takes property without due process of law merely because it imposes a new liability of this character. The question instead must be the more fundamental one: Does the statute seek

an end so unreasonable or arbitrary as not to be within the legislative discretion? or, Has it sought a legitimate end by similarly unreasonable or arbitrary means? If these questions are answered in the negative, and the statute violates no definite or historically well-settled principles of private right, it should be held to be due process. In the light of human experience during the past generation throughout the civilized industrial world, can a statute be said to be unreasonable or arbitrary that places upon the person conducting a hazardous business the risk of personal injury to those employed in it? By a system of insurance this risk, like those from fire, will at once be spread over the whole industry, added to the cost of its product, and borne by society, which also gets the benefit from the industry and its hazards.

Some of the illustrations used by the New York court in argument, if meant in full seriousness, show a failure to appreciate the principle of the statute. For instance, the court says:

"If the legislature can say to an employer, 'You must compensate your employé for an injury not caused by you or by your fault,' why can it not go farther and say to the man of wealth, 'You have more property than you need and your neighbor is so poor that he can barely subsist; in the interest of natural justice you must divide with your neighbor so that he and his dependents shall not become a charge upon the state?' "

And Chief Justice Cullen suggests that a law might as well compel a man to pay his neighbor's debts as to shift to him the risk of injury to men employed in his hazardous employment. The difference between making a business bear its own inherent risks, and making well-to-do persons divide their property with the needy generally or assume their debts is sufficiently obvious

even to the lay mind, and the use of such illustrations sensibly weakens an opinion already unconvincing.

It is impossible to believe that this decision will stand as the final interpretation of "due process of law" in American constitutions applicable to workingmen's compensation acts. As the United States Supreme Court said in 1898 regarding the meaning of this constitutional provision,

"In view of the fact that from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly the new relations between employers and employés, as they arise."[5]

§ 59. Reasons for upholding view of court.—The opinions of lawyers and publicists who espouse the views of Professor Hall, and contend for the constitutionality of the New York compensation act are burdened with the assumption that there is no other remedy which is adequate and available and which the Legislature of New York might not readily adopt and at the same time come within the constitutional limitation of "due process of law," and be sound from the standpoint of economics. From the point of view of the author, herein lies the error of their reasoning and the wisdom of the constitutional limitations of the State and Federal constitutions, and the wisdom in this respect of the opinion of the Supreme Court of New York.

Good laws must rest ultimately upon sound economic principles. Such a remedy is compulsory industrial insurance for workmen which has been in operation throughout continental Europe for twenty-five years

[5] Holden v. Hardy, 169 U. S. 366, 387: In this connection consult the brief of Albert P. Thom, Report of Employer's Liability Commission of the United States, pt. 4, pp. 1281-1301. See further Hearings before the Employer's Liability and Workmen's Compensation Commission pursuant to Public Resolution, U. S. No. 45.

and has been enacted recently in Ohio, Massachusetts and Washington. Compulsory industrial insurance laws for workmen,—state or mutual,—which creates a fund through the exercise of the taxing power of the State comes within the constitutional limitation of "due process of law." The states have the right to enact such laws in the exercise of their police powers for the protection of the health, safety and the general welfare of the public. By such laws the right of the employé to sue and of the employer to defend with his common-law defenses are appropriated. The employés are given in return compensation without regard to negligence, except willful negligence, and the employer is given in return a discharge from liability to suit, and this, without regard to fault except in cases of malicious fault.

From the standpoint of economics, it must be kept in mind that the number of employers who employ a few men and who have a small amount of capital and all of their credit invested in their business is very large. For example, in Ohio, 50 per cent. of the employers employ less than twenty men. Any remedy is insufficient which does not furnish the employés of an employer of small capital and of a few men as adequate and certain compensation as it would the employés of the great employer with many employés. A compensation act based upon compulsory industrial insurance which provides a fund through the exercise of the taxing power of the State gives the employer of a few men as equitable protection and his employés as certain and adequate compensation as a compensation act of the form of the New York Act would give the United States Steel Corporation and its employés.

Whether a law is constitutional or not, depends ultimately upon the fact that the law is supported by the preponderating will of the people of the state whose

legislature enacted the law, and whether the preponderating will of the people of a state continues to support a law or not depends upon the accuracy with which the law corrects the economic inequality which the people desire to have cured.

§ 59a. New York General Liability Law with compensation features.[6]—At the time the New York Workmen's Compensation Law was enacted in 1910, there was in existence a General Liability Law,[6] which contained many compensation features. Though the compensation features of this statute have rarely been invoked, the statute has not been repealed. The compensation provisions of this statute are pointed out in a later chapter on Matters Common to the Various American Compensation Acts.

[6] Labor Law, 1909, art. 14, ch. 36; Laws 1910, amended ch. 352.

CHAPTER VII.

THE MONTANA WORKMEN'S INSURANCE ACT.

Sec.
60. Its nature and construction by the Supreme Court.
61. Questions presented to the court.
62. The constitutionality of the act.
63. The effect of the decision.
64. Text of the Montana Insurance Act.

§ 60. Its nature and construction by the Supreme Court.—The Montana Workmen's Insurance Act was approved March 4th, 1909, and went into effect October 1st, 1910, and its benefits were to commence four months thereafter. This act provided for an insurance fund for the benefit of "all workmen, laborers, and employés employed in and around any coal mines or in and around any coal washeries in which coal is treated, except office employés, superintendents and general managers, in case of accidents occurring in the course of their employment." It provided for a co-operative fund, contributions thereto being made by employers on the basis of the product of their mines, and by employés on the basis of their gross earnings. Fixed sums were to be paid injured persons in case of disability, or to their surviving dependents in case the injury resulted in death. The administration of the law was committed to the auditor of the State, the act being in large measure automatic in its operation. While obligatory upon the employer and his workmen to make the payments prescribed by the law, injured workmen or their dependents might ignore the provisions of the law and sue for damages under either statute or common law.

The constitutionality of the act was finally determined by the Montana Supreme Court in Cunningham v.

Northwestern Improvement Co.[1] in 1911. In the lower court the right of the auditor to collect the assessments provided for by the act was challenged by a coal mining company and it refused to pay the sums due, whereupon the auditor brought action in the court below on an agreed statement of facts. The sole question involved was the constitutionality of the act. The act was sustained by the district court, whereupon the Northwestern Improvement Co. appealed. This appeal resulted in the reversal of the judgment of the lower court, the law being declared unconstitutional on the ground that, in permitting employés to waive their rights under the insurance act and sue an employer who had made the required contributions to the insurance fund, there was not given to the employer that equal protection of the law which is his constitutional right.

§ 61. Questions presented to the court.—In this case the questions considered were: 1. Can the statute be upheld as a proper exercise of the police power of the State? 2. Is the act an example of class legislation, in that it singles out one particularly hazardous employment and subjects it to burdens not placed upon other extra-hazardous employments within the State? 3. Is the right to trial by jury denied? 4. Does the system and machinery provided in the act constitute due process of law? 5. Is the contention that the provision for payment to an injured employé of his compensation in a lump sum defeats the purpose of the act, viewed as a police regulation, tenable? 6. Is the argument that the act does not differentiate between a careful and a careless employer, valid? 7. Is the claim that the act lodges judicial powers in the State auditor, valid?

§ 62. The constitutionality of the act.—The court sustained the constitutionality of the act in respect to

[1] 44 Mont. 108, 119 Pac. 554.

all of the foregoing questions except the one raised in the fourth. The court, in answering question No. 4, held the act unconstitutional because it violated the "due process of law" clause of the constitution of the United States. The court, speaking through Mr. Justice Smith, said: "It is therein contended that in reserving to the employé his right to an action at law, the act denies to the mine operator the equal protection of the laws. We have decided that the fact that actions at law are not abolished by the act is not, of itself, a sufficient reason for declaring the statute unconstitutional. We do not believe 'that for the purpose of determining the validity of the tax it is necessary to find an immediate specific benefit to the individual taxed,' as is maintained by some writers on the subject. We think we have already shown that if the act can be justified at all it must be upon a much broader principle than that above indicated. The duty to make payments as provided in section 2 is absolute and unconditional. It can be enforced by appropriate action. But after full compliance with the terms of the act, the employer is not exonerated from liability. He may still be sued and compelled to pay damages in a proper case. No provision is made for reimbursement in whole or in part. The injured employés of one operator may all resort to the indemnity fund, while those of another may elect to appeal to the courts. The result is that the employer against whom an action is successfully prosecuted, is compelled to pay twice. He has fully paid his assessments under the act and is also obliged to pay damages. This fact is so palpable as to be needless of discussion. The act in this regard is not only inequitable and unjust, but clearly illegal and void as not affording to such employer the equal protection of the laws. The Legislature of the State of Washington guarded against this contingency by abolishing all actions for negligence. (Ch. 74, Session

Laws, Washington, 1911.) The General Assembly of Maryland, in an act somewhat similar to ours (see Laws of Maryland, 1910, ch. 153) provided: 'If any suit or action be brought against any operator for or in respect of any injury or disability received by an employé while in the discharge of his duty or for death resulting therefrom * * * and said operator shall appear and defend such suit or action and a judgment shall be rendered against him, he shall, after satisfying said judgment * * * be entitled thereafter to deduct from the payments required to be made by him * * * a sum equal to the amount of said judgment and costs.'

"The manner in which the equal protection of the laws shall be afforded to the operator is, of course, for the legislative body to determine; but some method must assuredly be provided to protect him from double payments. The act in its present form, is, in this regard, so repugnant to all ideas of equity and equality that it must, we think, appeal to every right-thinking person, on the most cursory examination, as unjust. It was to guard against such legislation as this, as we apprehend, that the framers of all American constitutions guaranteed to the citizen the equal protection of the laws."

On the question of the exercise of judicial power by the auditor it was observed by the court:

"The fact that one who has a cause of action at common law may elect to take under the act, and the suggestion that as to him the auditor may be called upon to exercise judicial power, has no persuasive force when we consider that such election is altogether voluntary, and he may resort to the courts if he so desires. If the tax provided for in the act can legally be exacted from the employer, and, as is the case, the acceptance of its benefits by the claimant ipso facto operates to release the employer from liability, it is difficult to see how the latter has any further concern in the matter

of distribution of the fund than to be assured, as the act provides he may be, that it is not paid out on improper or fraudulent claims. If the summary method of administration provided may not be resorted to, then one of the paramount reasons for this class of legislation must be entirely eliminated from consideration. It seems to us that the opinion of the Supreme Court of the United States * * * effectually disposes of this question, as well as of some others which we have considered. As this opinion is already too long, however, we shall content ourselves with a single quotation therefrom: 'Though, generally, both public and private wrongs are redressed through judicial action, there are more summary extrajudicial remedies for both.' "

§ 63. The effect of the decision.—This decision and the earlier New York decision[2] establish conclusively that a compulsory workmen's industrial insurance or workmen's compensation act can not contain a provision that will give the injured worker the option of suing his employer or of accepting the compensation provided by the act.

This decision leaves Montana without an operative workmen's compensation act. However, since the court sustained all of the provisions of the law, except that giving the injured worker the right to elect to sue his employer at law as heretofore or to accept the compensations given him under the compensation act, it may be cured and made operative by an amendment which takes away this option to sue and makes it obligatory upon him to accept the compensations made and provided in the act.

§ 64. Text of the Montana Insurance Act.—The act is entitled an act to create a state accident insurance, and total permanent disability fund, for coal miners and

2 Ives v. South Buffalo Railway Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162 n.

employés at coal washers in the state of Montana, and providing for the maintenance and management of the same; extending and defining the duties of the state auditor; and fixing penalties for the violation of its provisions. It provides:

Section 121. (Section 1.)—To whom act applies.—All workmen, laborers, and employés employed in and around any coal mines, or in and around any coal washers in which coal is treated, except office employés, superintendents and general managers, shall be insured in accordance with the provisions of this act, against accidents occurring in the course of their occupations.

Section 122. (Section 2.)—How fund raised—To whom paid.—All corporations, partnerships, associations or persons engaged in the business of operating any coal mine or coal washers in the State of Montana shall pay to the auditor of the State, within five days after the monthly wages at the particular mine shall have been paid, one cent per ton on the tonnage of coal mined and shipped, or sold locally, or having been mined is ready for shipment or sale during the month for which the wages were paid, and all persons mentioned in section 1 employed in and about coal mines shall allow to be deducted from their gross monthly earnings one per cent. thereof, the deduction to be made by the agent, manager, or foreman of any corporation, association, partnership, person or persons engaged in the business of operating any coal mine or coal washer, and paid to the State auditor within five days after such monthly wages have been paid.

Section 123. (Section 3.)—Agents to report tonnage mined—Contracts waiving effect of act void.—The agent, manager, foreman or accountant of any corporation, partnership, association, person or persons engaged in mining coal in Montana, shall on or before the

fifth day succeeding the pay day at his respective mine, make a report under oath to the State auditor as to the tonnage mined and subject to the payment of one cent per ton thereon; and stating the gross earnings subject to the one per cent. deduction as provided in this act, accompanied by a certified check in full for the amount of the tax provided in section 2 of this act. It shall be unlawful for any person, employer, employé, corporation, partnership, association or union to make any contract waiving, avoiding or affecting the full legal effect of this act.

Section 124. (Section 4.)—Receipts of funds by auditor—Duties—Liabilities of sureties of State treasurer—Interest.—It is hereby made the duty of the State auditor to receive all moneys as provided for in this act, and to send the proper acknowledgment to the person making such remittance. The auditor shall pay all moneys so received by him to the State treasurer, who shall keep such sums in safe custody in a distinct fund to be known as the Employers' and Employés Co-operative Insurance and Total Permanent Disability Fund. The State treasurer must invest the surplus of this fund in safe and convertible state, county or city bonds or bonds of the United States. All interest accruing from such investments shall be accredited to this insurance fund. The bond of the State treasurer shall be liable for such funds, and it shall be his duty to keep accurate accounts of the receipts and disbursements of such money.

Section 125. (Section 5.)—Payment of death claims—To whom—Duty of auditor—Personal injuries—How compensation paid.—The auditor of State shall keep full statistics of the operation of this function of his department in the event of the death by accident of an employé insured under this act, who shall have come to his death in the course of his employment and by causes

arising therein. The auditor of State upon being satisfied by adequate evidence of such death shall issue a warrant upon the State treasurer to persons dependent upon the deceased, these warrants to issue in the following order: (1) To surviving wife and child, or children, in equal shares, and if neither wife or child, or children be alive, then, (2) to surviving parents who are dependent, or partially so, upon the deceased; if none, then (3) to such other relatives of the deceased as survive him and are dependent upon him, in the sum of three thousand ($3,000) dollars.

A workman receiving injuries which permanently incapacitate him from the performance of work shall receive a compensation monthly, not to exceed one dollar ($1.00) a day for each working day. Compensation for permanent injury shall not be allowed until after the expiration of twelve weeks from the time such injuries were sustained, provided that the medical practitioner examines and pronounces the injury as being permanent, compensation may then be allowed from commencement of disability. The auditor of State, however, may, when in his judgment he deems it advisable, use so much of the funds as is necessary in procuring a medical practitioner, for the purpose of examination or treatment under this act, for such injuries as herein mentioned compensation shall continue during disability, or until settlement is effected as provided for in section 9 of this act. Total or permanent disability shall consist of the loss of both legs or both arms, the total loss of eyesight or paralysis, or other conditions incapacitating him from work, caused by accident, or injuries received during employment as specified by this act; provided that if death, as a result of the injury, ensues at a period not longer than one year from date of accident the sum of three thousand dollars ($3,000.00) shall be paid the de-

ceased workman's dependents as hereinbefore provided. The representatives of a foreigner, except the widow or dependent children, who were not living within the country at the time of the accident, shall have no claim for the compensation provided for in this act. Such foreign person shall file his foreign address, if married, with the officer of his employer with whom he is employed and duplicate thereof with the State auditor, giving his wife's name and dependent children, and such other identification as may be required by the auditor of State. Loss of any limb, or eye, caused by accident to a workman while employed as provided for in this act, shall be compensated for in the sum of one thousand ($1,000.00) dollars, provided, that in the event there shall be no funds available in the fund to pay the auditor's warrant when drawn, the same shall draw interest out of the fund at the rate of ten per cent. per annum until such warrant is called for payment by the treasurer, which shall be as soon as the fund is sufficient to pay the same with its interest then due.

Section 126. (Section 6.)—Monthly payments—Applications for.—Where a workman is entitled to monthly payments under this act, he shall file with the auditor of State his application for such, together with a certificate from the county physician of the county wherein he resides, attested before a notary public.

Section 127. (Section 7.)—Fraudulent claims—Duty of auditor.—If any person or persons, company or corporation who is then paying into this insurance fund shall believe that any person or persons are obtaining, or have made application to obtain benefits hereunder improperly or fraudulently, and shall file his written request that such person's claim be investigated, the State auditor must upon the receipt of such request, request the secretary of the State Board of Health to make an

examination for the purpose of this act and his certificate as to the condition of the person or persons with reference to their rights to benefit under this act shall be conclusive evidence as to his condition.

Section 128. (Section 8.)—Claimant refusing to submit to examination—Effect.—If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation under this act shall be suspended until such examination takes place, and shall absolutely cease unless he submits himself for an examination within one month after being required to do so.

Section 129. (Section 9.)—Monthly payments—Redemption by lump sum—Amount.—Where any monthly payment has been made to a workman for any period whatever, the liability under this act, may on the application by, or on behalf of the workman, be redeemed by the payment of a lump sum, which in no instance shall be in excess of the amount specified as death indemnity, and all monthly payments made prior shall be deducted from such settlement.

Section 130. (Section 10.)—Annual report of auditor —Plenary power to adjust claims.—The auditor of State shall report in January of each year to the Governor of the experience and business of this function of his department, and shall have plenary power to determine all disputed cases which may arise in its administration not herein provided for, and to recommend in his report the rates of premiums necessary in order to preserve such fund, and shall order paid such indemnification as herein provided. He shall have power to define the insurance provisions of this act by regulations not inconsistent therewith and shall prescribe the character of the monthly or other reports required of the parties liable hereunder and the character of the proofs of deaths, or

to total permanent disability, and shall have power to make all other orders and rules necessary to carry out the true intent of this act.

Section 131. (Section 11.)—Release of employer—Benefits exempted—Suit—Forfeiture of benefits.—No money paid or payable in respect of insurance or monthly compensation under this act shall be capable of being assigned, charged, taken into execution or attached, nor shall the same pass to any other person by operation of law; and the acceptance of pecuniary benefit under the provisions of this act shall operate to release the person or persons, corporations, partnerships, or associations causing such injuries or death for which benefits are so claimed, who shall have paid the assessment provided in section 2 of this act, and also the employer, officers and agents thereof from all liability and claim arising from such injuries or death. The commencement of a suit to recover for such injuries or death shall operate as a forfeiture of the right to benefit under this act.

Section 132. (Section 12.)—Violations of provisions of act—Penalties.—A manager, agent, foreman, accountant, person or persons who represent any corporation, partnership, association, person or persons, engaged in the mining or managing of any coal mines or coal washers in Montana, or person or persons liable for the payments herein provided for who shall violate the intent of this act by inaccurate reports of tonnage of coal produced by them, or the earnings of employés in their employ or who in any manner hinders or obstructs the auditor of State in ascertaining facts bearing upon any case provided for in this act or who may refuse correctly to make out such reports as are required by this act, or as requested by the auditor of State, or submit to its provisions, when liable therefore, or who shall

fraudulently obtain benefits hereunder shall be fined for each offense the sum of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars and imprisonment in the county jail for a period of not less than one month nor more than six months, or by both such fine and imprisonment. The proceeds of all fines shall be forwarded to the State treasurer and by him credited to the insurance fund.

CHAPTER VIII.

AN ANALYSIS OF THE PRINCIPLES OF THE LEGAL BASIS OF COMPULSORY INSURANCE AND COMPENSATION LAWS.

Sec.

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95. Legislature in its enactments limited only by State Federal constitutions.
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99. Whether act may be optional.

§ 65. Introductory.—It is the purpose of this chapter to present and discuss the objections most frequently urged against insurance and compensation laws when their validity is called in question in courts of law.[1]

§ 66. The nature and remedial provisions of insurance laws.—Workmen's insurance acts greatly resemble each other in their provisions. The Ohio act, which may be taken as a type of these laws, provides:

(1) That all workmen injured shall be compensated at the rate of 66 2-3 per cent of his loss of wages for not longer than 300 weeks, and not more than $12 per week; in case of death where there are dependents, the compensation shall not be less than $1,500 nor exceed $3,400, plus doctor bills not to exceed $200 and funeral expenses to a maximum amount of $150; and in no case shall the compensation for any injury exceed $3,400, except in the case of total disability. (2) That any employer of five or more persons shall pay monthly into the state fund, the premium based upon the pay roll and hazard of his business, sufficient to pay his pro rata share of the compensation awarded to workmen against the fund. (3) That every employer of five or more persons who fails to pay said premiums shall not avail himself of any of

[1] The matter for this chapter is largely founded on the brief used by the author in his presentation of the case of the Ohio Industrial Insurance law in behalf of the State before the Ohio Supreme Court. It is thought to cover all questions that have been raised against these laws in all the states where their validity has been litigated.

the so-called common-law defenses in case he is sued by a workman who is injured while in his employ. (4) That every workman must accept the compensation provided by the act, in lieu of all rights and remedies heretofore existing, excepting the case where he may be denied any relief whatever, or where he may be injured through a willful act of the employer, or through the employer's violation of a statute or ordinance, in which case he may elect to sue his employer at law or take under the compensation act. (5) That in case a workman, covered by the act, is totally disabled he shall be compensated at the rate of 66 2-3 per cent of his average weekly wage, in no case at less than $5 per week, nor at more than $12 per week, and the compensation shall be paid as long as total disability lasts.

§ 67. Nature of the obligation imposed.—The relation imposed by these laws is purely economic in character as distinguished from the creation of a new right in the employé sounding in tort. The new obligation of the employer to his employés is rather a wage obligation in the nature of an undertaking thrust upon the employer, as a part of the contract of employment, to become a party to an insurance policy created by law and to be entered into as additional consideration for services rendered by the employé. The obligation falls within the domain of contract and thus involves a sphere of constitutional law pertaining to the subject of the regulation of contracts.

The true theory in all cases is that the compensation is in fact a tax levied by the state, both upon the employer and employés, and accepted by the employé class for the public welfare. This is necessarily so, for were the new obligation of the employer deemed to be created with the sole object of establishing in the employé a new private right and remedy in substitution of

his former right to sue in tort for damages, then an industrial insurance law would be as unfair to the employé as to the employer. This proposition is true, because in lieu of a possible opportunity formerly belonging to the injured employé to be made whole in a sum for damages fully commensurate with his peculiar loss, he would be compelled, under an insurance or compensation act to accept a stipulated amount admittedly having no relation to his injury, but measured on the basis of his relative economic position in the community, viz.:—the amount of his wage. This is not a just basis to compensate the employé for his injury, if his new right is to be classified in the same category in which his old right belongs, viz.:—a means to redress a private wrong. The reason for such a law must be to require the employé to accept, against his former precarious right to adequate damages, the entirety, not only for himself, but also for all members of his class, of receiving in case of injury, a stipulated sum computed not independently as to each party injured on the basis of loss peculiar to his own personal injury but relatively as to all in accordance with their respective earning capacities. Hence its sole justification must be the public welfare, and whatever its form be it must in substance result as to the parties involved in the arbitrary levying and administration of a tax fund.

On the above theory it is argued that the positions of the employer and employé should be so altered that no new statutory privity of relationship be created between them, as was the case under the New York law,[2] but rather that each be required independent of the other to perform a new duty toward the state, namely, the employer and employé, each, by paying an adequate

[2] Ives v. South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S) 162n.

tax to the state, and the employé by surrendering a chose in action to the state; that these respective duties, however, can be constitutionally required of each only upon some direct compensatory return of an economic character moving to each. Distinction is here made between a law (for instance the New York statute) such as gives in fact a right in A to appropriate directly by new right and remedy the property of B and a law which leaves A and B in respect of their personal relations as they were before, but requires each for the needs of the public welfare, and in exchange for specific benefits respectively received, to surrender to the state certain rights and likewise to look to a state agency alone for the returning benefits.

Another limitation also inheres in this theory of the appropriation of the property rights of the two classes involved, namely, that since the tax is not levied on all in the state but that certain classes of citizens are alone selected a corresponding benefit or return must be traced to them for their property and rights to be so appropriated. This constitutional limitation requires that any scheme of industrial insurance or workmen's compensation shall be what it purports to be, namely, an actual readjustment of the social relations of the classes involved in it by making such scheme a substitute for and exclusive of all other present methods of protecting personal injuries; for if there exist in any plan of compensation the recognition of the right of the employé to either exercise his option to sue at law for personal injuries, or to take his insurance, by this very token is it declared that the intention of such a law is not to bring about such an economic reform, for still would there exist all the evils now inherent in the present method of redressing personal injuries; in consequence such a plan would disclose, as was suggested by the New York Court of Appeals in the Ives

case,[3] but the creation of a new remedy in the employé, additional to those now vested in him and unconstitutional in character, to redress a private wrong. The very essence of any scheme of industrial insurance or workmen's compensation to be constitutional requires that it be exclusive in character. The tax levied must be for a public purpose and the act to be valid must be a proper exercise of the police power.

Upon the assumption that such taxation would be for a public purpose, the brief then considers the limitations prescribed by the Seventh Amendment, being that provision of the Constitution which preserves the right of trial by jury in suits at common law. All attempts to demonstrate that in so far as a state agency is concerned any controversies arising between such agency and any of the parties of the tax or as to the distribution of the same, would not fall within the scope of the seventh amendment and may therefore be adjudicated by such statutory remedy or summary procedure as the state may prescribe.

§ 68. Nature of the obligation imposed.—German view.—The American insurance acts are adaptations of the German industrial insurance law against accidents, enacted in 1884, which all European countries have adopted in a more or less modified form. Dr. Laband, in analyzing industrial insurance legislation of Germany and other European countries, uses language which is equally applicable to the American acts.[4]

He says: "The Imperial legislation starts from this idea—that the undertaker of an enterprise who employs workmen in order to appropriate to himself the economic value of the fruits of their labor owes them not only the agreed wages for this labor, but ought

[3] Ives v. South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162n.

[4] See Droit Public de l'Imperial Allemand, IV, 12.

also to bear with them the risks of accident resulting from this labor. This conception has not taken the shape of a principle of private law which governs the relations resulting, in a judicial sense, from the labor contract; it has become one of the tasks laid upon the state to take care of the victim of an industrial accident, or of those he leaves behind him; and this task is accomplished with the means and according to the forms dictated by public law. The right of the workman to the solicitude of the state is therefore wholly independent of an agreement relating to his work and the clauses it contains; he enjoys this right even when there is no agreement of this sort and this convention can neither modify this or deprive him of it. So, this right is not founded on a fault committed by the master or any of his employés, and even a fault of the workman does not affect it at all unless he has intentionally caused the accident. The obligation to aid the workman is not a legal obligation, or what is called a 'state obligation' of the master towards his workmen, for master and workmen are not set against one another like debtor and creditor, and they are powerless to vary the right of one to aids and the obligations of the other to give them. The workmen or their survivors receive the aids which come to them by an intermediary that the Empire or the State has delegated to perform this duty, an intermediary who has with them no private legal relation, who simply performs a public administrative function, confided to him by imperial order, when he determines the indemnity to be given to the workmen or effects its payment."

§ 69. The relationship between employer and employe under common law and modern liability acts.— There is this distinction between the legal principles applicable to the common law of torts and the more recent employer's liability acts and those applicable to

industrial insurance and compensation acts. The body of law applicable to the former pertains entirely to the redress of private wrongs. The liability results in the payment of damages to the employé intended to be commensurate with and to reimburse him for the injury suffered. The sole object of laws of this form is to regulate private rights, to readjust the relationship between individuals and to restore the parity presumptively existing between them.

§ 70. The relationship between employer and employe under insurance and compensation acts.—The obligations of industrial insurance and workmen's compensation acts accrue from contingencies not dependent upon or within the control of the parties and thus have no relationship whatever to the conduct of the parties; hence these obligations are not based upon wrongs. It follows then that they must pertain to the subject of government regulations, and are in the nature of economic provisions taking the form of indirect taxation levied to regulate occupations, for on what other basis would the government be justified in writing into the labor contract against the will of the parties, an insurance policy? Were this not so, industrial insurance or workmen's compensation would be, without basis of justice or equity from the standpoint of both the employé and employer, for the theory of such laws is that compensation is not to be commensurate with injury but is based upon wages, thereby substituting for the former obligations based upon tort, which offered damages commensurate with injury, a purely arbitrary sum. Such a scheme has no relation to the adjustment of private wrongs. If it be justifiable it must be on the sociological theory of the right of the state to levy a tax for the purpose of protecting from an economic standpoint, the community as a whole. It follows, therefore, whether compensation be paid by the state

as insurance in the form of a tax levied upon all citizens of the state, or be paid through the intermediary of assessments levied by industrial associations, or be paid in the form of compensation from the employer to the employé, it has all the inherent attributes of money raised by the appropriation of private rights in the form of a tax for the benefit of the common good.[5]

It would, therefore, seem that in an analysis of constitutional limitations it would be futile to look for analogy to the decisions which pertain to the regulation of the private relations between the parties. Hitherto, for this purpose there have been drawn into discussion of this subject, cases which hold a statute constitutional making a railroad company liable for injury though without fault;[6] cases holding statutes constitutional which make railroad companies responsible for fires set by engines though without fault;[7] cases holding subcontractors' lien laws constitutional,[8] or such familiar illustrations as the ancient law of deodands or the liability of the husband for the tort of the wife, or the liability of the master for the acts of his servant. But it is to be noted that all the statutory or common law duties interpreted in these decisions pertain solely to the protection of private rights.

§ 71. Validity as to employer—Deprivation of defenses.—It is clearly within the power of a State Legislature to deprive the employer of the three so-called common law defenses, to-wit, the defense of the fellow servant rule, the defense of the assumption of the risk and the defense of contributory negligence.

This proposition is amply sustained by authority. The supreme judicial court of Massachusetts, addressing

[5] R. J. Carey Brief on the power of Congress in respect of Industrial Insurance and the Law of Workmen's Compensation.

[6] Chicago, etc., R. Co. v. Zernicke, 183 U. S. 582, 46 L. ed. 339.

[7] St. Louis, etc., R. Co. v. Mathews, 165 U. S. 1, 41 L. ed. 611.

[8] Jones v. Great Southern, etc., Co., 83 Fed. 370.

itself to this matter in a case involving the compensation law of that state, said:

"The rules of law relating to contributory negligence and assumption of the risk and the effect of negligence by a fellow servant were established by the courts, not by the Constitution, and the Legislature may change them or do away with them altogether as defenses (as it has to some extent in the employer's liability act) as in its wisdom in the exercise of powers intrusted to it by the Constitution it deems will be best for the 'good and welfare of this commonwealth.' See Missouri Pacific Railway v. Mackey, 127 U. S. 205, 32 L. ed. 107; Minnesota Iron Co. v. Kline, 199 U. S. 593, 50 L. ed. 322. The act expressly provides that it shall not apply to injuries sustained before it takes effect. If, therefore, a right of action which has accrued under existing laws for personal injuries constitutes a vested right or interest, there is nothing in the section which interferes with such right or interests. The effect of the section is not to authorize the taking of property without due process of law, as the Court of Appeals of New York held was the case with the statute referred to in the preamble to the questions submitted to us, and which in consequence thereof was declared by that court to be unconstitutional. Ives v. South Buffalo Railway, 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162n. Construing the section as we do and as we think that it should be construed, it seems to us that there is nothing in it which violates any rights secured by the State or Federal Constitutions."[9]

To a similar effect is a late decision of the Wisconsin Supreme Court:

"The two defenses [the defense of the assumption of risk and negligence of a fellow servant] which the

[9] In re Opinion of Justices, 209 Mass. 607, 96 N. E. 308.

legislature has thus attempted to take away are not entrenched behind any express constitutional provision, nor were they originally created by legislative action. They were both evolved by the courts. * * *

"It is frankly admitted by appellant that it is within the legislative power to make this change with regard to the hazardous trades, but not with regard to what are called the non-hazardous trades. But why not? There are, of course, some occupations which are exceptionally hazardous, and it may well be that it would be within legislative discretion to classify these very hazardous occupations and remove the defenses to them, while retaining them as to others less hazardous. Indeed, that very thing has been done and has been approved by the courts in this and many other states, especially in the case of railroads and to some extent with other industries. Minnesota Iron Co. v. Kline, 199 U. S. 593, 26 Sup. Ct. 159; 50 L. ed. 322; sec. 1816, Stats. (1898), as amended by ch. 254, Laws of 1907; Kiley, etc., C. M. & St. P. R. Co., 142 Wis. 154, 125 N. W. 464; sec. 1636j, Stats. (1898); sec. 1636jj, Stats. (ch. 303, Laws of 1905).

"But because there is room for classification it does not follow that legislation without classification is unconstitutional. There are hazards in all occupations; indeed they follow every man from the cradle to the grave. What constitutional requirement, either express or implied, clothes these court-made defenses with exceptional sanctity as to the less hazardous industries, and wards off from them the sacrilegious hand of the legislature? We are referred to none, and we know of none. It is admitted in the Ives case, supra that both the fellow-servant defense and the contributory-negligence defense, being of judicial origin may be changed or abolished by the legislature. See also the opinion of the Justices of the Massachusetts Supreme Court on the

Personal Injuries act of 1911, 96 N. E. 308. We see absolutely no ground for the contention that these defenses may be lawfully abrogated as to the more hazardous industries, but must be forever held sacred as to the less hazardous industries. There may be a less persuasive reason for the change in the case of the latter class of industries, but this does not deprive the Legislature of the power to make it."[10]

§ 72. Validity as to employe.—Workmen's insurance and compensation acts take away from the employé his common-law right of action against his employer for nonfatal injuries caused by the employer's negligence. As to fatal injuries, a cause of action against an employer was unknown to the common law, is a statutory creation, and consequently (since the Constitution of the state contains no inhibition) is subject without question to repeal by the Legislature. The proposed act carefully saves any right of action on account of an injury received prior to the date named for it to become operative, upon the employers and employés affected by it. The question involves not the taking away of a vested right of action, but the changing of the law in respect of expectancies and possibility of action in which the party has no present interest.

At an early day the Legislature of Pennsylvania passed a statute abolishing the doctrine of respondeat superior in the case of persons injured on or near railroads and not in the employ of the railroad company. Of this law the Supreme Court said: "The law says that the legal principle of respondeat superior shall have no place in this particular relation; that as a matter of public policy for the good of all, those who voluntarily venture into employment alongside of the servants of a

[10] Borgnis v. Falk, 147 Wis. 327, 133 N. W. 209. See also Ives v. South Buffalo R. Co., 201 N. Y. 271.

railroad company shall have just the same remedies for injuries happening in the employment that these have, and none other. In doing this no fundamental right of the person thus voluntarily venturing is cut off or struck down. The liability of the company for the acts or omission of others, though they be servants, is only an offspring of the law. The negligence which injures is not theirs in fact, but is so only by imputation of law. The law which thus imputes it to the company for reason of public policy can remove the imputation from the master and let it remain with the servant whose negligence causes the injury."[11]

The Supreme Court of the United States had before it the same statute and sustained it, saying: "If it be conceded, as contended, that the plaintiff in error could have recovered but for the statute, it does not follow that the legislature of Pennsylvania, in preventing a recovery, took away a vested right or a right of property. As the accident from which the cause of action is asserted to have arisen occurred long after the passage of the statute, it is difficult to grasp the contention that the statute deprived the plaintiff in error of the rights just stated. Such a contention in reason must rest upon the proposition that the state of Pennsylvania was without power to legislate on the subject,—a proposition which we have adversely disposed of. This must be, since it would clearly follow, that if the argument relied upon were maintained, that the state would be without power on the subject. For it can not be said that the state had authority in the premises if that authority did not even extend to prescribing a rule which would be applicable to conditions wholly arising in the future."[12]

A right of action of a third person against a master

[11] Kirby v. Pennsylvania R. Co., 76 Pa. 506.

[12] Martin v. Pittsburg, etc., R. Co., 203 U. S. 284, 51 L. ed. 184, 27 S. Ct. 100, 8 A. & E. Ann. Cas. 87.

for negligence of his servant was a common-law right of action.[13]

§ 73. Validity as to employe—Vested rights in remedies withdrawn.—"Vested rights," says Judge Cooley, "can not be taken away by legislative enactments, but a right can not be considered a vested right unless it is something more than such a mere expectation as may be based upon the anticipated continuance of the present general laws. The Legislature may change such general laws constitutionally except as to a right of interest that may have already accrued or become perfected. * * * In organized society every man holds all he possesses, and looks forward to all he hopes for through the aid and under the protection of the laws; but as changes of circumstances and of public opinion, as well as other reasons affecting the public policy, are all the while calling for changes in the laws, and as these changes must influence more or less the value and stability of private relations and strengthen or destroy well-founded hopes, and as the power to make very many of them could not be disputed without denying the right of the political community to prosper and advance, it is obvious that many rights, privileges, and exemptions that usually pertain to ownership under a particular state of law, and many reasonable expectations, can not be regarded as vested rights in any sense." Says the Supreme Court of the United States in Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77: "A mere common-law regulation of trade or business may be changed by statute. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of

[13] Middleton v. Fowler, 1 Salk. 282; Blackstone's Com. 431; Gray v. Portland Bank, 3 Mass. 364, 3 Am. Dec. 156; Harlow v. Humiston, 6 Cow. 189.

municipal law, and is no more sacred than any other. Rights of property which have been created by the common law can not be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will or even at the whim of the legislature, unless prevented by constitution limitations. Indeed the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to changes of time and circumstances."[14]

Some of the states in their Constitutions, in substance, contain the provision of Magna Charta, that "every man shall have a remedy for injury done him in person, property, or reputation." Nevertheless, the principle last above stated has been sustained in states having such a constitutional provision.[15]

"Conceding that a cause of action for personal injuries is property, the cause of action, i. e., the property must exist before one can be deprived of it at all. A statute which abrogates a cause of action for personal injury before such cause of action has arisen or before the injury occurs, or requires certain things to be done by the injured party as conditions precedent to a cause of action, does not deprive the injured party of his property rights without due process of law. * * * In other words, the legislature may create a right of action which never existed, if in doing so it does not affect rights which vested prior thereto. A party injured after the legislature has taken away the right of action for personal injuries can no more complain of it than a party against whom a right of action is given for an injury resulting in death, can of such a legislative enactment.

[14] Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77. Applied to the relation of master and servant in Vindicator Consol. Gold Min. Co. v. Firstbrook, 36 Colo. 498, 86 Pac. 313, 10 A. & E. Ann. Cas. 1108.

[15] Templeton v. Linn County, 22 Ore. 313, 51 L. R. A. 730, 29 Pac. 795; William v. Galveston, 41 Tex. Civ. App. 63, 90 S. W. 505.

For the one party is no more injuriously affected by such legislation than the other. In the one case what was before actionable ceases to be so; in the other, what was not before actionable becomes so."[16]

§ 74. Validity as to the State—Public interest.—Workmen's insurance and compensation acts generally provide for the creation of a new department for their administration, the expenses of which are borne by the state. The usual limitation on the right of the state to expend the moneys of the state is that the expenditure shall be for a public purpose. It is clear that it is a public purpose to pay the salaries and defray the office, traveling and court expenses of state officials, and other expenses of a state department charged with the administration of a branch of the police power of the state, just as the state bears without question the expense of administration of other departments, e. g., the railroad commission, mine, factory, grain and hotel inspection, all operating under the police power.

§ 75. The problem of industrial insurance.—The inquiry at the outset of the discussion would seem to be: Has the state the power to regulate industries for the purpose of protecting the economic welfare of the community by levying a tax in the form of an insurance obligation upon the same for the benefit of the employés injured while employed in such industries? And again, if the state has a right to levy such a tax may it as part of the private rights appropriated by it for the benefit of the common good, take from the employé the right now belonging to him to redress his personal injury caused by the default of his employer by recovering damages from the latter?

[16] Sawyer v. El Paso, etc., R. Co., 49 Tex. Civ. App. 106, 108 S. W. 718.

§ 76. Whether these laws infringe constitutional limitations.—The insurance and compensation acts are generally contested on the ground that they are violative of recognized constitutional limitations, in that they authorize the taking of property without due process of law, they lack uniformity of operation, they curtail unlawfully the administration of judicial authority, they authorize the taking of private property for private use, they authorize the taking of private property for public use, they delegate legislative powers, they impair the obligation of contracts between employer and employé, they amount to an unreasonable exercise of the police power.

§ 77. Insurance acts sustainable against constitutional objections under analogous decisions.—It is believed that insurance acts are already well grounded as against the foregoing constitutional objections in four distinct lines of cases in American jurisprudence. These cases are (a) The bank depositors guarantee act cases; (b) The sheep-dog law cases; (c) The cases which justify the enactment of a law which authorizes the creation of a fund to be disbursed by a state commission in the erection and operation of a state asylum for inebriates; (d) The cases which uphold statutes imposing a liability upon fire insurance agents, of the nature of a tax, based upon the amount of insurance effected by them, for the creation of a fund to care for and cure sick and injured firemen.

§ 78. Analogous decisions—Application to insurance acts.—Each class of these four lines of cases is an example of the police power of the states to create a fund by taxation for the protection of the health, safety and general welfare of classes of citizens and the general public. The rule is that an ulterior public advantage may justify a comparatively insig-

nificant taking of private property for what, in its immediate purpose, is a private use.

The principles involved in the New York Compensation Act do not fall within this rule. There the removal of the defenses of the employer, and making him personally liable for any sum from a few dollars to $3,000.00 in cases where heretofore he was not liable at all, so to speak, taking his property in chunks for which heretofore he was not liable at all and allowing the employé to choose to take under the new act, or to sue under the old liability or common-law, is taking property without the process of law.

This line of cases authorizes the state legislatures to provide for summary methods of collecting and distributing the several funds through the executive and admministrative arms of the state, in a manner similar to that provided by the insurance and compensation acts through the Liability Board of Awards.

§ 79. **Analogous decisions—Bank depositors' guarantee acts.**—That the foregoing constitutional limitations are safely guarded is borne out by reference to the decisions of the Supreme Court of the United States in the bank depositors guaranty cases.[17] In these cases state legislatures required the creation of funds for the purpose of protecting depositors in insolvent banks. In Oklahoma the statute created a board and directed it to levy on every bank existing under the laws of the state an assessment of a certain per cent. of the bank's average daily deposits, with certain deductions, for the purpose of creating a depositors' guaranty fund. Said Mr. Justice Holmes:

"We must be cautious about pressing the broad

[17] Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 31 Sup. Ct. 299; Shallenberger v. First State Bank, 219 U. S. 114, 31 Sup. Ct. 189, 55 L. ed. 117; Assaria State Bank v. Dolley, 219 U. S. 121, 31 Sup. Ct. 189, 55 L. ed. 123.

words of the 14th amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it is often difficult to mark the line where what is called the police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a nolumus mutare as against the law-making power.

"The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. And while we should assume that the plaintiff would retain a revisionary interest in its contribution to the fund so as to be entitled to a return of what remained of it if the purpose were given up (see Danby Bank v. State Treasurer, 39 Vt. 92, 98), still there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place, it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. Clark v. Nash, 198 U. S. 361, 49 L. ed. 1085, 25 Sup. Ct. 676, 4 A. & E. Ann. Cas. 1171; Strickley v. Highland Boy Gold Min. Co., 200 U. S. 527, 531, 50 L. ed. 581, 583, 26 Sup. Ct. 301; 4 A. & E. Ann. Cas. 1174; Olfield v. New York, N. H. & H. R. Co., 203 U. S. 372, 51 L ed. 231, 27 Sup. Ct. 72; Bacon v. Walker, 204 U. S. 311, 315, 51 L. ed. 499, 501, 27 Sup. Ct. 289. And in the next, it would seem that there may be other cases be-

sides the every-day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. See Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. 576, 20 Mor. Min. Rep. 466. At least if we have a case within the reasonable exercise of the police power, as above explained, no more need be said.

"It may be said in a general way that the police power extends to all the great public needs. Camfield v. United States, 167 U. S. 518, 42 L. ed. 260, 17 Sup. Ct. 864. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If, then, the legislature of the state thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. Even the primary object of the required assessment is not a private benefit as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. The priority of claim given to depositors is incidental to the same object and is justified in the same way. The power to restrict liberty by fixing a minimum of capital required of those who would engage in banking is not denied. The power

to restrict investments to securities regarded as relatively safe seems equally plain. It has been held, we do not doubt rightly, that inspections may be required and the cost thrown on the bank. See Charlotte, C. & A. R. Co. v. Gibbes, 142 U. S. 386, 35 L. ed. 1051, 12 Sup. Ct. 255. The power to compel beforehand, co-operation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end. Gundling v. Chicago, 177 U. S. 183, 188, 44 L. ed. 725, 728, 20 Sup. Ct. 633. So far is that from being the case that the device is a familiar one. It was adopted by some states the better part of a century ago, and seems never to have been questioned until now. Danby Bank v. State Treasurer, 39 Vt. 92; People v. Walker, 17 N. Y. 502. Recent cases going not less far are Lemieux v. Young, 211 U. S. 489, 496, 53 L. ed. 295, 300, 29 Sup. Ct. 174; Kidd, D. & P. Co. v. Musselman Grocer Co. 217 U. S. 461, 54 L. ed. 839, 30 Sup. Ct. 606."

§ 80. Analogous decisions—Sheep-dog fund cases.—Many states, notably Ohio, Illinois, Indiana, Kentucky, Michigan and Massachusetts, exercising the police power for the promotion of the sheep industry and public welfare, have enacted statutes imposing a tax or license upon dogs in a stated sum, collecting the same from the owner, placing the collections in a public fund, and distributing the same through state officers in payment of damages to owners of sheep killed by dogs. These statutes have been universally upheld by the courts.

The Ohio act was attacked as being an unconstitutional exercise of the taxing power of the state and an

unreasonable exercise of the police power. The court said in sustaining this law:

"While the dog as a species, possesses many valuable traits which by some are denominated virtues, it is nevertheless known of all men, that he possesses vicious traits which are especially inimical to the important industry of raising sheep and wool. If the government were powerless to protect this industry from the ravage of dogs, it would indeed be important to protect its citizens in the enjoyment of property, than which none other is more essential to the public welfare. But such power is unquestionably vested in the general assembly as a police power, and, in the judgment of the general assembly a per capita tax on dogs has been deemed a means of securing the necessary protection to sheep owners; and, as the choice of means was within the power and discretion of the general assembly, its judgment is not subject to judicial control. The original statute on this subject (which has been, in substance transferred to Revised Statutes above quoted) (passed May 5, 1877, 74 Ohio L. 177) was entitled 'An Act for the protection of wool growers and the confiscation of dogs,' a subject not only within the police powers of the general assembly, but one deserving of its consideration.[18]

§ 81. Analogous decisions—Whisky cure cases.—The Supreme Court of Minnesota sustained an act to establish a fund for the foundation and maintenance of an asylum for inebriates, requiring all sellers of liquors to pay ten dollars a year to the state treasurer, through the county treasurers, in addition to the usual license, the fund to be disbursed by a state commission in the

[18] Holst v. Roe, 39 Ohio St. 340, citing Van Horn v. People, 46 Mich. 183; Cole v. Hall, 103 Ill. 30; Mitchell v. Williams, 27 Ind. 62; McGlone v. Wornock, 129 Ky. 274, 111 S. W. 688; Blair v. Forehand, 100 Mass. 136.

erection and operation of a state asylum for inebriates. The court in its opinion points out that the act is an exercise of the police power upon a subject clearly within that power, saying:

"This act regards the traffic as one tending to produce intemperance, and as likely, by reason thereof, to entail upon the state the expense and burden of providing for a class of persons rendered incapable of self-support, the evil influence of whose presence and example upon society is necessarily injurious to the public welfare and prosperity, and, therefore, calls for such legislative interposition as will operate as a restraint upon the business, and protect the community from the mischiefs, evils and pecuniary burdens flowing from its prosecution. * * * That these provisions unmistakably partake of the nature of police regulations, and are strictly of that character, there can be no doubt, nor can it be denied that their expediency or necessity is solely a legislative, and not a judicial, question. * * * Regarding the law as a precautionary measure, intended to operate as a wholesome restraint upon the traffic, and as a protection to society against its consequent evils, the exacted fee is not unreasonable in amount, and the purpose to which it is devoted is strictly pertinent and appropriate. It could not be questioned but that a reasonable sum imposed in the way of an indemnity to the state against the expense of maintaining a police force to supervise the conduct of those engaged in the business, and to guard against the disorders, and infractions of law occasioned by its prosecution, would be a legitimate exercise of the police power, and not open to the objection that it was a tax for the purpose of revenue, and, therefore, unconstitutional. Reclaiming the inebriate, restoring him to society, prepared again to discharge the duties of citizenship, equally promotes the public welfare, and tends to the accomplishment of like

beneficial results, and it is difficult to see wherein the imposition of a reasonable license fee would be any the less a proper exercise of this power in the one case than in the other. The purpose to which the license fund created by the act is designated is more consonant to the idea of regulating the traffic and preventing its evils than is the case under the general license law, which devotes the fees received to common school purposes, and we are not aware that any objection has ever been urged against that law on that account."[19]

This case is cited with approval by Professor Freund in his work on the Police Power, Sec. 623.

§ 82. Analogous decisions—Firemen's fund cases.—Statutes imposing a liability upon fire insurance agents, based upon the amount of the insurance effected by them, for the benefit of a fund to care for injured firemen have been upheld in the states of New York, Illinois and Wisconsin.[20]

§ 83. These laws an exercise of taxing power—Attributes and limitations of taxing power.—It is important to inquire as to the right to tax and the extent of this right, for it is this power of the state that is invoked to sustain all insurance and compensation acts. "The power of taxation," says Judge Cooley,[21] "is an incident of sovereignty, and is possessed by the government without being expressly conferred by the people. It is a legislative power; and when the people, by their constitutions, create a department of government upon which they confer the power to make laws, the power of taxa-

[19] State v. Cassidy, 22 Minn. 312.

[20] Fire Department v. Noble, 3 E. D. Smith (N. Y.) 440; Fire Department v. Wright, 3 E. D. Smith (N. Y.) 453; Exempt Fireman's Fund v. Roome, 29 Hun (N. Y.) 391, 394; Firemen's Benevolent Ass'n v. Lounsbury, 21 Ill. 511, 74 Am. Dec. 115; Fire Department v. Helfenstein, 16 Wis. 136.

[21] Cooley Taxation (2d ed.), p. 4.

tion is conferred as part of the more general power. * * * Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes and not only is the power unlimited in its reach as to subjects, but in its very nature it acknowledges no limits, and may be carried to any extent which the government may find expedient. It may, therefore, be employed again and again upon the same subjects, even to the extent of exhaustion and destruction, and may thus become in its exercise a power to destroy. If the power be threatened with abuse, security must be found in the responsibility of the legislature which imposes the tax to the constituency who are to pay it. The judiciary can afford no redress against oppressive taxation, so long as the legislature, in imposing it, shall keep within the limits of legislative authority and violate no express provision of the constitution. The necessity for imposing it addresses itself to the legislative discretion, and it is or may be an urgent necessity which will admit of no property or other conflicting right in the citizen while it remains unsatisfied."

"But," says Judge Cooley, "great as is the power of any sovereignty to levy and collect taxes from its citizens, it is not in a constitutional country without limitations which are of a very distinct and positive nature."[22]

"It is unfit," says Chief Justice Marshall, "for the judicial department to inquire what degree of taxation

[22] Cooley Taxation (2d ed.) 54.

is the legitimate use, and what degree may amount to the abuse of the power."[23]

§ 84. Subjects of taxation.—It is to be borne in mind that though the state is practically unlimited as to the extent of the burden it may impose in the way of taxation, yet this power must be exercised within well defined limitations as to the subjects of taxation.

"The power of taxation," says the Supreme Court of the United States, "however vast in its character, and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them the taxation may be exercised in a great variety of ways. It may touch property in every shape in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures and in transportation."[24] To similar effect Chief Justice Marshall said: "The power of legislation, and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself, and need not be reserved where property of any description, or the right to use it in any manner, is granted to indi-

[23] McCullough v. Maryland, 4 Wheat. (U. S.) 316, 480, 4 L. ed. 415.

[24] State Tax on Foreign Held Bonds, 15 Wall. (U. S.) 315.

viduals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens; and that portion must be determined by the legislature. This vital power may be abused; * * * but the interest, wisdom and justice of the representative body, and its relations with its constituents, furnish the only security where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally."[25]

§ 85. Similarity of attributes of general taxation and eminent domain.—The underlying principle of special taxation, general taxation and eminent domain is the same, namely, that for the tax collected a return shall be given back to the individual whose property is appropriated. "Taxation and eminent domain indeed rest substantially on the same foundation, as each implies the taking of private property for the public use on compensation made; but the compensation is different in the two cases. When taxation takes money for the public use, the taxpayer receives, or is supposed to receive, his just compensation in the protection which government affords to life, liberty and property, in the public conveniences which it provides, and in the increase in the value of possessions which comes from the use to which the government applies the money raised by the tax; and these benefits amply support the individual burden."[26]

"The theory of the law is, that full compensation is then received in every instance. It is not, it is true, a compensation made in money, but, as in every other case of taxation, the person taxed is to receive a benefit from the expenditure of the moneys collected."[27]

[25] Providence Bank v. Billings, 4 Pet. (U. S.) 514, 561, 7 L. ed. 171.
[26] Cooley Const. Lim. (7th ed.), p. 715.
[27] Cooley Taxation (2d ed.), p. 625.

§ 86. Necessity that purpose of tax be a public purpose.—"It is the first requisite of lawful taxation," says Judge Cooley, "that the purpose for which it is laid shall be a public purpose. The decision to lay a tax for a given purpose involves a legislative conclusion that the purpose is one for which a tax may be laid; in other words, is a public purpose. But the determination of the legislature on this question is not, like its decision on ordinary questions of public policy, conclusive either on the other departments of the government, or on the people. The question, what is and what is not a public purpose, is one of law; and though unquestionably the legislature has large discretion in selecting the object for which taxes shall be laid, its decision is not final. In any case in which the legislature shall have clearly exceeded its authority in this regard and levied a tax for a purpose not public, it is competent for any one who in person or property is affected by the tax, to appeal to the courts for protection."[28]

§ 87. The public purpose for which taxes may be levied.—The regulation of private rights for a public purpose under the police power is as much an appropriation of property as the direct taking of property under the taxing power. Thus one of the powers of exercising the police power is to levy a tax for regulative purposes instead of for revenue.

"There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed in revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the state under which the public revenues are apportioned and collected. The reason is, that the imposition has not

[28] Cooley Taxation (2d ed.), p. 55.

for its object the raising of revenue, but looks rather to the regulation of relative rights, privileges and duties as between individuals, to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for these purposes it would seem proper to look upon as being made in the exercise of that authority which is inherent in every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the enjoyment of his own rights and privileges by requiring the observance of rules of order, fairness and good neighborhood, by all around him. This manifestation of the sovereign authority is usually spoken of as the police power."[29]

Industrial insurance would seem in part to come within the scope of regulative legislation above referred to, since the fund necessary to be raised to protect the employed class must necessarily be created through the exercise of some form of the taxing power, and, moreover, the primary object of such regulative legislation is to readjust relations between certain classes of society to the development of the public welfare. Therefore in determining whether such legislation be constitutional or not, one is confronted with the limitations placed by the Fifth Amendment upon the exercise of the police power by the state in the form of the taxing power.

What then is a public purpose, from the standpoint of such regulative legislation?

"In the first place, taxation having for its only legitimate object the raising of money for public purposes and the proper needs of government, the exaction of moneys from the citizens for other purposes is not a

[29] Cooley Taxation (3d ed.), 1125.

proper exercise of this power, and must therefore be unauthorized. In this place, however, we do not use the word 'public' in any narrow and restricted sense, nor do we mean to be understood that whenever the legislature shall overstep the legitimate bounds of their authority the case will be such that the courts can interfere to arrest their action. There are many cases of unconstitutional action by the representatives of the people which can be reached only through the ballot-box; and there are other cases. where the line of distinction between that which is allowable and that which is not is so faint and shadowy that the decision of the legislature must be accepted as final, even though the judicial opinion might be different. But there are still other cases where it is entirely possible for the legislature so clearly to exceed the bounds of due authority that we can not doubt the right of the courts to interfere and check what can only be looked upon as ruthless extortion, provided the nature of the case is such that judicial process can afford relief. An unlimited power to make any and everything lawful which the Legislature might see fit to call taxation, would be, when plainly stated, an unlimited power to plunder the citizen."[30]

§ 88. Public purpose determined by Legislature.— It must always be conceded that the proper authority to determine what should and what should not constitute a public burden is the legislative department of the state. This is not only true for the state at large, but it is true also in respect to each municipality or political division of the state; these inferior corporate existences having only such authority in this regard as the legislature shall confer upon them. And in determining this question, the legislature can not be held in any narrow or technical rule. Not only are certain expenditures

[30] Cooley Const. Lim., p. 696.

absolutely essential to the continued existence of the government and the performance of its ordinary functions, but as a matter of policy it may sometimes be proper and wise to assume other burdens which rest entirely on considerations of honor, gratitude or charity. The officers of government must be paid, the laws printed, roads constructed and public buildings erected; but with a view to the general well being of society, it may also be important that the children of the state should be educated, the poor kept from starvation, losses in the public service indemnified, and incentives held out to the faithful and fearless discharge of duty in the future, by the payment of pensions to those who have been faithful public servants in the past. There will, therefore, be necessary expenditures which rest upon considerations of policy only, and in regard to the one as much as to the other, the decision of that department to which alone questions of state policy are addressed must be accepted as conclusive.[31]

Very strong language has been used by the courts in some of the cases on this subject. In a case where was questioned the validity of the state law confirming township action which granted gratuities to persons enlisting in the military service of the United States, the Supreme Court of Connecticut assigned the following reasons in support:

"In the first place, if it be conceded that it is not competent for the legislative power to make a gift of the common property, or of a sum of money to be raised by taxation, where no possible public benefit, direct or indirect, can be derived therefrom, such exercise of the legislative power must be of an extraordinary character to justify the interference of the judiciary; and this is not that case.

[31] Cooley's Const. Lim. (7th ed.), p. 699.

Second. If there be the least possibility that making the gift will be promotive in any degree of the public welfare, it becomes a question of policy, and not of natural justice, and the determination of the legislature is conclusive. And such is this case. Such gifts to unfortunate classes of society, as the indigent blind, the deaf and dumb, or insane, or grants to particular colleges or school, or grants of pensions, swords, or other mementoes for past service, involving the general good indirectly and in slight degree, are frequently made and never questioned."[31a]

§ 89. Necessity of benefit as condition to right to tax.—Notwithstanding the vast power which resides in the states to tax, all taxation must proceed upon the theory that a corresponding benefit returns to the individual taxed for the property which belonged to him and which was appropriated. For example, in the use of a general tax collected for the general revenues of the state, it is assumed that the state is suffered to make full and adequate return in the protection which the state gives to the individual, life, liberty and property, and in the increase to the value of his possessions by the uses to which the state applied the money contributed. In the case of a tax which is levied for a special purpose, this theory of return becomes emphasized so that for the purpose of determining the validity of the tax, it becomes necessary to find an immediate specific benefit passing to the individual taxed.[32]

§ 90. Necessity of return of benefit to one paying to special fund.—It is essential to the validity of any special tax that there be some return of benefit to the person paying the tax. That is to say, if A's property be given to B under the guise of a tax for the public

[31a] Booth v. Woodbury, 32 Conn. 118, 128.

[32] Cooley Taxation (2d ed.), p. 24.

need, then A must be put in a special class receiving a peculiar benefit in lieu of his appropriated property. Under the insurance or compensation act of the type of the Ohio act the employer is discharged from suit when he has made his contribution to the fund, which complies with the foregoing principle. In other words, to levy this tax without giving A this benefit, would be to appropriate his property without due process of law. Thus to pass a law which would leave the employé the right to exercise the option as to whether he would accept the insurance or continue in the alternative to exercise his present rights of action at law, would, so far as the question of benefits are concerned, leave the employer class exactly where it is at present and would in consequence be the appropriation of his property without due process of law, for in such instance such a law would not only fail to regulate in an economic manner the relation between the employer and employé as desired but would also by reason of continuing the opportunity to sue under the present methods for personal injuries, fail completely to carry out the sole public object of so-called compensative legislation; namely: the economic welfare of the community.

§ 91. Whether conditions of equality and uniformity are satisfied in insurance and compensation acts.—A state has the power to tax all callings or it may tax one or more. The Fourteenth amendment to the Federal constitution is satisfied if equal rights are accorded to all in the class. Special legislation is not prohibited by the amendment. In fact the greater part of all legislation is special either in the extent which it operates or the objects sought to be obtained by it.[88]

"A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it

[88] Southwestern Oil Co. v. State, 217 U. S. 114, 30 Sup. Ct. 496.

is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a state could not tax any property or calling unless, at the same time, it taxed all property or all callings. Its discretion in such matters is very great, and should be exercised solely with reference to the general welfare, as involved in the necessity of taxation for the support of the state. A state may, in its wisdom, classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States."[34]

Industrial insurance as already ordered is a state regulation readjusting the relations of employer and employé for the economic welfare of the community. But this can not be sustained if it amounts to no more than taking the property of the employer and giving it to the employé. It is required that there must be a specific benefit moving to the class taxed, for otherwise no relation can be traced between it and the special purpose for which the funds realized are to be used. In this instance the public good is sought not only in the adequate protection of the wage-earning class but also in the prevention of the vast economic waste now arising from personal injury litigation. Any law then which justifies the appropriation of private property for the public welfare in this respect must be so drawn as in fact to produce these desired results. So far as the employé is concerned, it is clear that for any rights of his so appropriated comes a return in the form of insurance compensation. However, in the scheme of industrial insurance no such direct benefit is traceable to the employer. It remains then that he be indirectly compensated in the

[34] Connelly v. Union Sewer Pipe Co., 184 U. S. 540, 562, 46 L. ed. 679, 690, 22 Sup. Ct. 431, 440.

only way possible if his property is to be taken specifically to be used to insure the employé class, viz: by appropriate protection against the present evils of litigation. Thus one would surrender to the state a right of action for personal injury and receive insurance, and the other would pay a tax in exchange for protection against litigation. As a result each party would have received a peculiar benefit for the particular property interest involuntarily surrendered by it to the common welfare.

The principles above stated are laid down in these decisions of the court which pertain to the distribution of burdens where the interests of the public and of individuals are blended in a common work or service imposed by law.

"There are many instances where parties are compelled to perform certain acts and to bear certain expenses, when the public is interested in the acts which are performed as much as the parties themselves. Thus in opening, widening and improving streets, the owners of adjoining property are often compelled to bear the expenses, or at least a portion of them, notwithstanding the work done is chiefly for the benefit of the public. So, also, in the draining of marsh lands, the public is directly interested in removing the causes of malaria, and yet the expense of such labor is usually thrown upon the owners of the property. Quarantine regulations are adopted for the protection of the public against the spread of disease, yet the requirement that the vessel examined shall pay for the examination is a part of all quarantine systems. Morgan's L. & T. R. & S. S. Co. v. Louisiana, 118 U. S. 455, 466, 30 Law ed. 237, 242. So, the expense of a compulsory examination of a railroad engineer, to ascertain whether he is free from color blindness, has been held to be properly chargeable against the railroad company. Nashville, C. & St. L. R.

Co. v. Alabama, 128 U. S. 96, 101, 32 L. ed. 352, 354. So, where work is done in a particular county for the benefit of the public, the cost is oftentimes cast upon the county itself instead of upon the whole state. Thus, in County of Mobile v. Kimball, 102 U. S. 691, 28 L. ed. 238, it was held that a provision for the issuing of bonds by a county in Alabama could not be declared invalid, although it imposed upon one county the expense of an improvement in which the whole state was interested. In such instances where the interests of the public and of individuals are blended in any work or service imposed by law, whether the cost shall be thrown entirely upon the individuals or upon the state, or be apportioned between them, is matter of legislative direction.[85]

§ 92. **Whether contract clauses of constitutions are violated—Uniform operation of laws.**—That the contracts contemplated by these acts are based upon a valid consideration is shown by reference to the "Voluntary Relief Department" cases involving railroad men. In this class of cases an employé of a railroad company applies for admission to an association composed of the company and a portion of its employés, and when admitted contracts that the company may deduct from his wages a certain insignificant sum each month for the purpose of forming, with other like contributions by other employé members, together with sums contributed by the company, a relief fund for the benefit of the employés in case of sickness, accident or death. The contract provides that in case of accident, the acceptance by the employé of relief from the fund relieves the company from liability for damages. These contracts when voluntarily and understandingly entered into have been

[85] Charlotte, etc., R. Co. v. Gibbs, 142 U. S. 386, 12 Sup. Ct. 255, 35 L. ed. 1051.

held to be based upon a valid consideration, to possess mutuality and to be not contrary to public policy.[36]

In respect to the sufficiency and legality of the notice that the employer who has paid the premiums required by the statute has posted in and about his place of business a copy of the state treasurer's receipt, to the effect that he has paid said premiums is amply supported by the road law cases. In these cases it has been held that such a law declares a rule of evidence whereby a waiver, on the part of the landowner, of his right to compensation, may be established, and does not conflict with the constitution relating to the inviolability of private property. The rule contained in this proviso can not be regarded either as a statute of limitations, whereby a right secured by the constitution is barred immediately upon the accruing thereof, or as a statute declaring the forfeiture of private property. Relief in equity, by restraining the appropriation of private property for a public road under said statutes, will not be granted on the ground that compensation therefor has not been paid to the owner in money, in a case where the owner, having actual notice of the proceedings in which the property is sought to be taken, and of the time and place of the view, neglected or failed to present his application for compensation, in writing, to the viewers, and where it is not shown that the default was occasioned by inevitable casualty, or by other circumstances against which reasonable precaution could not have provided.[37]

On the question of the extent the legislature may go in the exercise of its police power in regulating the relation of employer and employé, without violating the provisions of the Fourteenth Amendment of the Constitution of the United States by abridging the privileges or

[36] Pittsburg, etc., R. Co. v. Cox, 55 Ohio St. 497, 45 N. E. 641. See generally, § 79.

[37] Reckner v. Warner, 22 Ohio St. 275.

immunities of the citizens, or by depriving them of their property, or by denying to them the equal protection of the laws, the Supreme Court of the United States in construing an eight-hour law in the light of the Fourteenth Amendment has said:

"In passing upon the validity of state legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some States methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthy employments, have been found to be in need of additional protection," but this power of change is limited by the "fundamental principles laid down in the Constitution, to which each member of the Union is bound to accede as a condition of its admission as a State."[38]

§ 93. Insurance and compensation laws a proper exercise of police powers.—The Supreme Court of the United States has most clearly defined the conditions under which the conduct of business or employments warrants the exercise of legislative power of any state to pass proper police measures to regulate the same for the purpose of protecting society as a whole, in speaking through Chief Justice Waite, in the epoch-making case of Munn v. Illinois.[39]

This case involved the constitutionality of a law

[38] Holden v. Hardey, 169 U. S. 366, 42 L. ed. 780.

[39] 94 U. S. 113, 24 L. ed. 77.

passed by the legislature of Illinois to regulate the rates which grain elevators might charge. This act fixed a maximum rate which grain elevators might charge the public for storing grain. Said the Chief Justice: 'The state is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.

"From this source come the police powers, which, as said by Chief Justice Taney in the License Cases, 5 How. 583, 12 L. ed. 291, 'are nothing more or less than the powers of government inherent in every sovereignty, * * * that is to say, * * * the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day statutes are to be found in many of the states upon some or all of these subjects; and we think that it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the 5th Amendment in force, Congress, in 1820, conferred power upon the city of Washington 'to regulate * * * the rates of wharfage at private wharves, * * * the sweeping of chimneys, and to fix the rate of fees therefor, * * * and the weight and quality of bread,' 3 Stat. at L. 587, Chap. 104, Sec. 7; and in 1848, 'to make all necessary regulations respecting hackney carriages,

and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers.' 9 Stat. at L. 224, Chap. 42, Sec. 2.

"From this it is apparent that, down to the time of the adoption of the 14th Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular; it simply prevents the states from doing that which will operate as such a deprivation. * * *

Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control. * * *

"Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to de-

clare their obligations, if they use it in this particular manner."

It follows that the existing conditions relative to the effects of personal injuries which workmen receive in the due course of their employment, upon their dependents and society as a whole, come within the domain of applicability of the police power of the state and that the remedy of obligatory industrial insurance, is not in conflict with the constitutional limitations of the several state or Federal Constitutions.

§ 94. Whether laws open to objection of lack of uniformity of operation and equality of protection—Classification.—An objection commonly urged against compensation laws limited to employers having more than a stated number of employés, is that they are, by that very fact, without uniform operation within the meaning of constitutions making this a condition to a valid statute. The objection has been held without merit in the case of a statute which required mine inspection in mines where more than five men were employed at any one time.[40]

Such a classification is justified by the rule of reason. "It would be almost a physical impossibility to cover all employments at the start, as for example, domestic service, casual employments and farmers. European countries in the beginning placed similar limitations in the application of their acts and later removed them.

"This is a species of classification which the legislature is at liberty to adopt, provided it is not wholly arbitrary or unreasonable, as it was in Cotting v. Kansas City Stock Yards Co., 183 U. S. 79, in which an act defining what should constitute public stock yards and regulating all charges connected therewith was held to be unconstitutional, because it applied only to one particular company, and not to other companies or cor-

[40] St. Louis, etc., Coal Co. v. Illinois, 185 U. S. 203, 46 L. ed. 872.

porations engaged in a like business in Kansas, and thereby denied to that Company the equal protection of the laws. In the case under consideration there is no attempt arbitrarily to select one mine for inspection, but only to assume that mines, which are worked upon so small a scale as to require only five operators, would not be likely to need the careful inspection provided for the larger mines, where the workings were carried on upon a larger scale or at a greater depth from the surface, and where a much larger force would be necessary for their successful operation. It is quite evident that a mine which is operated by only five men could scarcely have passed the experimental stage, or that cautions necessary in the operation of coal mines of ordinary magnitude would be required in such cases. There was clearly reasonable foundation for discrimination here."[41]

The question is squarely met in a recent case construing a workmen's compensation act. In this case the court said:

"But it is said that there is no proper classification here and hence that the law is fatally discriminating in its character. The two defenses are preserved intact to employers who elect to come under the law and taken away from those who do not so elect.

"The rules governing classification are familiar and are in brief as follows: It must be based on substantial distinctions which make real differences, it must be germane to the purposes of the law; it must not be limited to existing conditions only; and must apply equally to each member of the class. It seems to us that this classification fully meets these requirements. Certainly there will be very real differences between the situation

[41] St. Louis, etc., Coal Co. v. Illinois, 185 U. S. 203, 46 L. ed. 872. See also McLean v. Arkansas, 211 U. S. 539, 29 Sup. Ct 206; Williams v. Arkansas, 217 U. S. 79; Angel v. O'Malley, 219 U. S. 129; Borgnis v. Falk Co., 149 Wis. 327, 133 N. W. 209.

of the employer who elects to come under the law and the employer who does not. * * *

"It seems to us that this question must be answered in the affirmative, and if it be so answered there can be no doubt as to the legitimacy of the classification, for the reason that it is quite apparent that the other conditions of valid classification are fully satisfied. There can be no doubt that the classification is germane to the purpose of the law, and it is not limited in its application to existing conditions only, and applies equally to each member of the class.

"The minor classification by which the fellow-servant defense is preserved to all employers employing less than four employés in a common employment is also attacked as having no proper legal basis, but it seems to us that the grounds of classification here are more persuasive even than in the case just discussed. The man who is employed with one or two other men in a given employment in all reasonable probability knows their characteristics well and will probably be with them a great part of the time. He will have ample opportunity to form a just judgment as to the risk of injury from their negligence which he will run if he works with them, and will be enabled to shape his own conduct accordingly; but the man who is one of a large number of men, many of whom he never sees, and some of these latter having duties to perform in distant places upon the due performance of which his own safety depends, has no opportunity to acquire any accurate knowledge of the characteristics of many of his fellow-workmen and can not intelligently decide what risk he runs at the hands of such distant and unknown employés. The difference in situation is not merely fanciful—it is real. In one case the employé knows or has the means of knowing what to expect from his co-laborers, in the other case he has neither the knowledge nor the means

of knowledge. Of course there will be cases on the border line where the difference in situation will be very slight or perhaps entirely non-existent. There will probably be no practical difference between the situation of the man who is one of four or five employés in a given employment and the situation of the man who is one of three, but this does not militate against the legitimacy of the classification: this is a necessary defect in all cases of classification based upon numbers. The question is not whether there may be some on one side of the line whose situation is practically the same as that of some on the other side, but whether there is a 'distinction between the classes as classes, whether there are characteristics which, in a greater degree, persist through the one class than in the other which justify legal discrimination between them.' "[42]

§ 95. Legislature in its enactments limited only by state and Federal constitutions.—The legislature of a State can do any legislative act that is not prohibited by the State or Federal Constitution, and without and beyond the limitations and restrictions contained in those instruments, the law-making power of the state is as absolute, omnipotent and uncontrollable as that of the English parliament. Within these limitations the legislature may pass any law which could be enacted in the most despotic government or which the people could enact in their primary capacity.[43]

This principle would certainly seem sufficient to warrant a legislature—with the power to act on the

[42] Borgnis v. Falk Co., 149 Wis. 327, 133 N. W. 209. See also State v. Evans, 130 Wis. 381.

[43] People v. Hill, 163 Ill. 186, 46 N. E. 796; Fireman's Benev. Soc. v. Lounsbury, 21 Ill. 511; Munn v. People, 69 Ill. 80; Mason v. Wait, 4 Scam. (Ill.) 127; People v. Hoffman, 116 Ill. 587; Chicago & St. Louis R. R. Co. v. Warrington, 92 Ill. 157; Richards v. Raymond, 92 Ill. 612; People v. Wall, 88 Ill. 75; Hawthorne v. People, 109 Ill. 302.

main subject—to fix the premiums to be paid, upon the basis of the hazard in the different employments and arbitrarily to make the compensation to the injured workman a certain precentage of his wages.

§ 96. Nature of administration of compensation acts.—An insurance or compensation act should not confound the executive and judicial functions of the state. It is of the highest importance on the ground of expediency that these provisions shall take, as far as possible, the form of administrative measures rather than those of a judicial nature. In the administration of an industrial insurance act, it is necessary in the interest of economy to put into operation summary methods of procedure in so far as they are in harmony with justice. At the same time, it is necessary to use as little as possible those judicial methods which experience has shown result in such great economic waste in the adjudication of personal injury suits. In the second place: If the final determination of a controversy arising under an industrial insurance act must be by means of a trial by jury, then the much hoped for saving in economy would be lost. The 7th Amendment of the Constitution of the United States reads as follows: "In suits at common law where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

It follows, therefore, from the 7th Amendment, that in case a controversy arising out of an industrial insurance act can be classified as an executive function of the state, then the 7th Amendment has no application, for the reason that it is limited in its application by its express provisions to judicial proceedings. The inquiry at this point is whether the administration of the act is an

executive or judicial function and if a judicial function does it fall within that class of actions which receive a trial by jury.

§ 97. Nature of administration of compensation acts whether executive or judicial—Due process.—A consideration of the question whether these acts call into exercise executive or judicial functions involves an investigation of the limitations created by the 5th Amendment to the Federal Constitution, with respect to "due process of law." This provision is deemed to apply not only to the power of the legislative, but also to the judicial branches of the state government. This amendment provides that:

"No person shall be deprived of life, liberty, or property, without due process of law."

The phrase "due process of law" has application in our problem, not only to the rights created by the act, but also rather to the remedy provided by the act to make the putting the same into effective operation.

The executive arm of every state government disposes of many problems which, considered by themselves, are purely judicial in character. This principle, as the authorities show, is illustrated in the following examples, viz.: (1) In the levying of special assessments; (2) in the exercise of the power of eminent domain; (3) in the collection of various taxes; (4) in the adjudication of those controversies (of purely judicial nature) which deal with questions of account between tax collectors and the state, in which the state may finally determine all issues through its administrative agencies. Says the Supreme Court of the United States:

"Though 'due process of law' generally implies and includes actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled

course of judicial proceedings (2 Inst. 47, 50; Hoke v. Henderson, 15 N. C. (4 Dev. L.) 15, 25 Am. Dec. 677; Taylor v. Porter, 4 Hill 146, 40 Am. Dec. 274; Vanzant v. Waddel, 2 Yerg. 260; Bank of State v. Cooper, 2 Yerg. 599, 24 Am. Dec. 517; Jones v. Perry, 10 Yerg. 59, 30 Am. Dec. 430; Greene v. Briggs, 1 Curt. C. C. 311, Fed. Cas. No. 5,764), yet this is not universally true. There may be, and we have seen that there are cases under the law of England after Magna Charta and as it was brought to this country and acted on here, in which process, in its nature final, issues against the body, lands, and goods of certain public debtors without any such trial; and this brings us to the question whether those provisions of the Constitution which relate to the judicial power are incompatible with these proceedings.

"That the auditing of the accounts of a receiver of public moneys may be, in an enlarged sense, a judicial act, must be admitted, so are all those administrative duties the performance of which involves an inquiry into the existence of facts and the application to them of rules of law. In this sense the act of the President in calling out the militia under the act of 1795 (12 Wheat. 19, 6 L. ed. 537,) or a commissioner who makes a certificate for the extradition of a criminal, under a treaty, is judicial. But it is not sufficient, to bring such matter under the judicial power, that they involve the exercise of judgment upon law and fact. * * * The power to collect and disburse revenue and to make all laws that shall be necessary and proper for carrying that power into effect, includes all known and appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some part of the Constitution. The power has not been exhausted by the receipt of the money by the collector. Its purpose is to raise money and use it in payment of the debts

of the government; and whoever may have possession of the public money, until it is actually disbursed, the power to use those known and appropriate means to secure its due application continues."[44]

The right of trial by jury does not apply to condemnation proceedings. The jury trial can only be claimed as a constitutional right where the subject is judicial in its character. The exercise of the right of eminent domain stands on the same ground with the power of taxation. Both are emanations of the law-making power. They are attributes of political sovereignty, for the exercise of which the legislature is under no necessity to address itself to the courts. In imposing a tax, or in appropriating the property of a citizen, or a class of citizens, for a public purpose, with a proper provision for compensation, the legislative act is itself due process of law; though it would not be if it should undertake to appropriate the property of one citizen for the use of another, or to confiscate the property of one person or a class of persons, or a particular description of property, upon some view of public policy, where it could not be said to be taken for a public use.[45]

The principle is the same in the matter of the levy and collection of ordinary taxes in a summary manner.[46]

"The mode of assessing taxes in the states, by the Federal government, and by all governments, is necessarily summary, that it may be speedy and effectual. By summary is not meant arbitrary or inequal or illegal.

[44] Murray v. Hoboken Land, etc., Co., 18 How. (U. S.) 272, 15 L ed. 372.

[45] Lewis Eminent Domain (2d ed.), § 311. In re New York Central R. Co., 66 N. Y. 407.

[46] Kelly v. Pittsburg, 104 U. S. 80, 26 L. ed. 659; Palmer v. McMahon, 133 U. S. 699, 33 L. ed. 776, 10 Sup. Ct. 324; Spencer v. Merchant, 125 U. S. 345, 31 L. ed. 763, 8 Sup. Ct. 921; Watson v. Nevin, 128 U. S. 578, 32 L. ed. 544, 9 Sup. Ct. 192; Hagar v. Reclamation Dist., 111 U. S. 701, 28 L. ed. 569, 4 Sup. Ct. 663.

It must, under our Constitution, be lawfully done. But that does not mean, nor does the phrase 'due process of law' mean, by a judicial proceeding. The nation from whom we inherit the phrase 'due process of law' has never relied upon the courts of justice for the collection of her taxes, though she passed through a successful revolution in resistance to unlawful taxation."[47]

The principle is satisfied if the law provides for a board of revision authorized to hear complaints respecting the justice of the assessment, and prescribes the time during which and the place where such complaints may be made.[48]

§ 98. Deprivation of right to trial by jury.—The question whether these statutes operate as a denial of the right to trial by jury within the constitutional sense is squarely met by the Supreme Court of Montana in passing upon the compensation law of that state. After showing that the constitution does not prevent a change in the system of actions for negligence, the court says:

"The right of trial by jury which is secured and protected by the constitution, refers to the trial of cases, actions, or suits at law (see Koppikus v. Capitol Commissioners, 16 Cal. 249), and has no reference to claims against an indemnity fund, such as are provided for by this act, or demands by the State auditor for occupation taxes. There is not anything in the constitution guaranteeing a right of trial by jury in case of demand for a license or occupation tax. The adjustment of claims under the act is an administrative function and not a judicial proceeding, and it is only in certain cases falling under the latter designation that trial by jury is guaranteed by the constitution. 'Due process of law' does not

[47] McMillen v. Anderson, 95 U. S. 37, 24 L. ed. 335.

[48] Hagar v. Reclamation District, 111 U. S. 701, 28 L. ed. 569, 4 Sup. Ct. 663.

necessarily require a jury trial." (Montana Co. v. St. Louis Min. Co., 152 U. S. 160.)[49]

The principles are well summarized by Mr. Robert J. Carey. In his view the decisions do not require trial by jury for the purpose of adjudicating a claim made by an employé against a government agency, for the payment out of a tax fund of a stipulated sum alleged to be due such employé as insurance. "Such right so vested in the employé is not a new private right against his employer. Thus it bears no resemblance to new substantive private rights akin to common-law rights, though created by statute. It is rather a right to share in a tax fund, and thus is necessarily a claim against the government, though the details of the law might be such that the claim is to be made against a government agency, as, for instance, a bureau, commission, or association. The fund against which such claim is made is collected admittedly in a summary proceeding; the right to an interest in such fund arises not for the purpose of recoupment in damages on account of a private wrong done the employé, but solely because the employé, being a victim of a prevalent evil, is to be protected by the state as a member of a class of society. The right, indeed, is in one respect akin to the right of a landowner in an eminent domain suit to compensation due him in lieu of his property appropriated. In the present instance the employé's chose in action against his employer for a person wrong suffered is taken from him, and in lieu of which he is paid a benefit for the appropriation of such right. Under such circumstances, even though a controversy arising over the payment of a fund take judicial form, we think it within the power of the government to determine the character of the remedy."[50]

[49] Northwestern Imp. Co. v. Cunningham, — Mont. —, 119 Pac. 554, citing Montana Co. v. St. Louis Min. Co., 152 U. S. 160.

[50] Brief on Power of Congress in respect of Industrial Insurance

§ 99. Whether act may be optional.—It is well settled by the decisions of the Supreme Court of the United States that if an act mandatory in form can be constitutional, it will likewise be constitutional if it is voluntary in form.[51]

This conclusion was reached in the bank deposit guarantee fund cases which came to the court from the states of Oklahoma, Nebraska and Kansas. The law of the latter state was voluntary in form in certain of its vital features. The laws of the former were obligatory in form. Speaking of these differences Mr. Justice Holmes said:

"The most important of these is that contribution to the fund is not absolutely required. On this ground it is said, and was thought by the Circuit Judge, that the law could not be justified under the police power. We cannot agree to such a limitation. If, as we have decided, the law might compel the contribution on the grounds that we have stated, it may try to bring about the same result by the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop. We shall not go through the details of minute criticism urged by the appellants, in most if not all of which they are in no way concerned.

"Perhaps the most striking of these subordinate matters is the preference of ordinary depositors over other creditors,—a preference that seems to be overstated by the appellants.

"This, obviously, is in aid of what we have assumed

and the Law of Workmen's Compensation, p. 137, citing McElrath v. United States, 102 U. S. 426, 26 L. ed. 189; Guthrie Nat. Bank v. Guthrie, 173 U. S. 534, 43 L. ed. 798, 19 Sup. Ct. 513.

[51] Noble State Bank v. Haskell, 219 U. S. 104, 31 S. Ct. 186, 299; Shallenberger v. First State Bank, 219 U. S. 114, 31 S. Ct. 189; Assaria State Bank v. Dolley, 219 U. S. 121, 31 S. Ct. 189.

to be the one of the chief objects and justifications of such laws, securing the currency of checks. The ordinary deposits are those that are drawn against in that way."[52]

[52] Assaria State Bank v. Dolley, 219 U. S. 121, 31 S. Ct. 189.

CHAPTER IX.

SUMMARY OF FOREIGN COMPENSATION LAWS.

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§ 100. Outline of foreign workmen's compensation laws.[1]—By the term "workmen's compensation laws" are meant enactments which embody the principle that the workman is entitled to compensation for injuries received in the course of his employment. Such laws have been enacted in twenty-two foreign States.

Usually the injuries must cause disablement for a specified number of days or weeks before compensation becomes due. The employer may usually be relieved from the payment of compensation if he can prove that the injury was caused intentionally or by wilful misconduct, or in some countries by the gross negligence of the injured person or during the performance of an illegal act.

The industries usually covered by the acts are manufacturing, mining and quarrying, transportation, build-

[1] The sources of this chapter are found in the 24th annual report of the Department of Commerce and Labor.—[AUTHOR.]

ing and engineering work, and other employments involving more or less hazard. In Belgium, France, and Great Britain the laws apply to practically all employments. In Austria, Belgium, Denmark, Finland, Germany, Italy, Luxemburg, Netherlands, Norway, Russia, Spain, and Sweden, only workmen engaged in actual manual work, and in some cases those exposed to the same risks, such as overseers and technical experts, come within the operations of the law. On the other hand, in France, Great Britain, the British colonies, and Hungary, the laws apply to salaried employés and workmen equally. Overseers and technical experts earning more than a prescribed amount are excluded in Belgium, Denmark, Germany, Great Britain, Italy, Luxemburg, and Russia. Employés of the state, provincial, and local administrations usually come within the provisions of the acts.

The entire burden rests upon the employer in all but five countries, Austria, Germany, Great Britain (since the enactment of the David Lloyd George Insurance Laws against sickness, invalidity and old age and out of work), Hungary, and Luxemburg, where the employés bear part of the expense. The laws in every case fix the compensation to be paid. Except in Sweden the compensation is based upon the wages of the injured person. It consists of medical and surgical treatment and periodical allowances for temporary disability, and annual pensions or lump-sum payments for permanent disability or death.

In most countries employers may contract with state or private insurance institutions for meeting the payments. In a number of countries such transfer is obligatory. Provision is usually made for the protection of beneficiaries in case of insolvency of employers.

The acts of nearly all of the countries are framed with the view of obviating the necessity for instituting legal proceedings. If disputes arise, the acts specify the

necessary procedure for settlement by special arbitration tribunals or by ordinary law courts.

The following summary gives the most important features of the workmen's compensation acts of all countries:

§ 101. Austrian schedule.—Date of enactment.—December 28, 1887, in effect November 1, 1889, Amendatory acts, March 30, 1888, April 4 and July 28, 1889, January 17, 1890, December 30, 1891, September 17, 1892, July 20, 1894, and July 12, 1902.

Injuries compensated.—All injuries causing death or disability for more than three days received in the course of employment, unless caused intentionally.

Industries covered.—Mining, quarrying, stonecutting, manufacturing, building trades, railways, transportation on inland waters, storage, theaters, chimney sweeping, street cleaning, building cleaning, sewer cleaning, dredging, well digging, structural iron working, etc.; agricultural and forestry establishments using machinery.

Persons compensated.—All workmen and technical officials regularly employed, but in agriculture and forestry only employés exposed to machinery.

Government employés.—Act applies to government employés unless an equal or more favorable compensation is provided by other laws.

Burden of payment.—Medical and surgical treatment for twenty weeks and compensation for four weeks of disability paid by sick funds, to which employers contribute one-third and employés two-thirds. Compensation for disability after fourth week, and for death, paid by territorial insurance associations, to which employés contribute 10 per cent and employers 90 per cent.

Compensation for death:

(a) Funeral expenses not to exceed 25 florins ($10.15).

(b) Pensions to members of family, not to exceed 50 per cent of earnings of deceased, to—

Widow, 20 per cent until death or remarriage; in the latter case a lump sum equal to three annual payments; to dependent widower, 20 per cent during disability.

Each legitimate child, 15 years of age or under, 15 per cent when one parent survives and 20 per cent when neither survives; to each illegitimate child, 15 years of age or under, 10 per cent; pensions of widow (or widower) and children reduced proportionately if they aggregate over 50 per cent.

(c) When pensions to above heirs do not reach 50 per cent, dependent heirs in ascending line receive pensions, not to exceed 20 per cent of earnings of deceased, parents taking precedence over grandparents.

(d) In computing pensions, the excess of the annual earnings over 1,200 florins ($487.20) is not considered.

Compensation for disability:

(a) Medical and surgical attendance for twenty weeks, paid by sick benefit fund.

(b) For total temporary or permanent disability, 60 per cent of average daily wages of insured workmen in the locality, paid by sick benefit funds, from first to twenty-eighth day; and 60 per cent of average annual earnings of injured person, after twenty-eighth day, paid by territorial accident insurance institutions.

(c) For partial temporary or permanent disability, benefits consist of a portion of above

allowance, but may not exceed 50 per cent of average annual earnings.

(d) In computing payments the excess of annual earnings over 1,200 florins ($487.20) is not considered.

Revision of compensation.—Reconsideration of the case may be undertaken by the insurance association of its own will, or upon petition.

Insurance.—Payments are met by mutual insurance associations of employers, in which all employés are required to be insured. The country is divided into districts, with a separate association for each district.

Security of payments.—Operations of the insurance associations are conducted under the supervision of the minister of interior, who may increase the assessments.

Settlement of disputes.—Disputes are settled by arbitration courts composed of a judicial officer appointed by the minister of justice, two experts appointed by the minister of the interior, and one representative each of the employers and employés.

§ 102. Belgian schedule.—Date of enactment.—December 24, 1903, in effect July 1, 1905.

Injuries compensated.—All injuries by accident to employés in the course of and by reason of the execution of the labor contract, causing death or disability for over one week, unless intentionally brought on by the person injured.

Industries covered.—Practically all establishments in mining, quarrying, forestry work, manufacturing, building and engineering work, transportation, and telephone and telegraph services; establishments using mechanical motive power; industrial establishments employing five or more persons; agricultural and commercial establishments employing three or more persons; industries designated by royal decree as dangerous. Other industries at option of employer.

Persons compensated.—Workmen and apprentices, and salaried employés exposed to the same risks as workmen whose annual salaries do not exceed 2,400 francs ($463.20).

Government employés.—Act covers employés of any public establishment engaged in industries enumerated above.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

(a) Funeral benefit of 75 francs ($14.48).

(b) A sum representing value of an annuity of 30 per cent of annual earnings of deceased, calculated upon basis of his age at death, to be distributed to—

Dependent widow or widower, whole amount if no other heirs, four-fifths if one child under 16 years of age or one or more dependent heirs, three-fifths if two or more children.

Children under 16 years of age, the residue.

Dependent heirs in ascending line and descending line under 16 years of age, in absence of widow or widower or children under 16 years of age.

Dependent brothers and sisters under 16 years of age in absence of heirs above enumerated.

(c) Allowances in case of annual wages of 2,400 francs ($463.20) or more, or of 365 francs ($70.45) or less, are based upon these amounts, respectively.

(d) Payments to widow and heirs in ascending line are converted into life pensions, those to other heirs into pensions expiring at age of 16 years. Heirs may require one-third

of capital value of life pensions to be paid in cash and pension reduced accordingly.

Compensation for disability:

(a) Expense of medical and surgical treatment for not over six months.

(b) If totally disabled, an allowance of 50 per cent of daily wages, beginning with day after accident.

(c) If partially disabled, an allowance of 50 per cent of loss of earning power, beginning with day after accident.

(d) If, after three years, disability is permanent, temporary allowance is replaced by life annuity. Victim may require one-third of capital value of pension to be paid in cash and pension reduced accordingly.

(e) Allowances in case of annual wages of 2,400 francs ($463.20) or more, or of 365 francs ($70.45) or less, are based upon these amounts, respectively.

Revision of compensation.—Revision of compensation because of aggravation or diminution of disability, or death of victim, may be made within three years.

Insurance.—Employers may transfer burden of payment of compensation to establishment funds or approved insurance companies or to general savings and retirement fund. They may also transfer burden of payment of temporary allowances to mutual aid societies.

Security of payments.—Employers who have not relieved themselves of liability by insurance must make deposits of cash or securities or give real estate mortgages to secure pension payments. To secure temporary disability payments of uninsured employers a State guaranty fund is maintained by a tax levied upon such employers.

Settlement of disputes.—The local justice of the

peace has sole jurisdiction as a court of first resort over disputes arising under the act, and his judgment is final in all cases involving 300 francs ($57.90) or less.

§ 103. British Columbia schedule.—Date of enactment.—June 21, 1902, in effect May 1, 1903.

Injuries compensated.—Injuries by accident arising out of and in the course of the employment which cause death or disable a workman for at least two weeks from earning full wages at the work at which he was employed, unless the injury is "attributable solely to the serious and wilful misconduct or serious neglect" of the injured workman.

Industries covered.—Railways, factories, mines, quarries, engineering work, and buildings which exceed 40 feet in height and are being constructed or repaired by means of a scaffolding or being demolished, or on which machinery driven by mechanical power is used for construction, repair, or demolition.

Persons compensated.—All persons engaged in manual labor or otherwise.

Government employés.—Act applies to civilian employés in the service of the Crown, to whom it would apply if the employer were a private person.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

(a) A sum equal to three years' earnings, but not less than $1,000 nor more than $1,500, to those wholly dependent on earnings of deceased.

(b) A sum less than above amount if workman leaves persons partially dependent on his earnings, the amount to be agreed upon by the parties or to be fixed by arbitration.

(c) Reasonable expenses of medical attendance and burial, not exceeding $100, if deceased leaves no dependents.

Compensation for disability:

(a) A weekly payment during disability after second week, not exceeding 50 per cent of employé's average weekly earnings during the previous twelve months, such weekly payments not to exceed $10, and total liability not to exceed $1,500.

(b) A weekly payment during partial disability after second week to be fixed with regard to the difference between employé's average weekly earnings before the accident and average weekly amount which he is earning or able to earn after the injury.

(c) A lump sum may be substituted for the weekly payments, after six months, on the application of the employer, the amount to be settled, in default of agreement, by arbitration under the act.

Revision of compensation.—Weekly payments may be revised at request of either party.

Insurance.—Employers may contract with their employés for the substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act if the attorney-general certifies that the scheme is on the whole not less favorable to the general body of employés and their dependents than the provisions of the act. In such case the employer is liable only in accordance with this scheme.

Security of payments.—When an employer becomes liable under the act to pay compensation and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, such workman has a first claim upon the amount so due, and a judge of the supreme court may direct the insurers to pay such sum into any chartered bank of Canada to be invested or applied to payment of compensation.

Settlement of disputes.—Disputes arising under the act are settled by arbitration of existing committees representative of employers and employés, or if either party objects, by a single arbitrator agreed upon by the parties, or, in the absence of agreement, by an arbitrator appointed by a judge of the supreme court. An arbitrator appointed by a judge of the supreme court has all the power of a judge of the supreme court. Questions of law may be submitted by the arbitrator for the decision of a judge of the supreme court.

§ 104. Cape of Good Hope schedule.—Date of enactment.—June 6, 1905, in effect September 1, 1905.

Injuries compensated.—All injuries to employés arising out of and in the course of the employment causing death or necessitating absence from work for more than three days and not being caused by or through the gross carelessness of the injured employé.

Industries covered.—Any trade, business, or public undertaking, on land or upon or within the territorial waters of the colony, except domestic, messenger, or errand service or employment in agriculture.

Persons compensated.—Employés, whether engaged in manual work or otherwise.

Government employés.—Act applies to civilian persons employed by or under the Crown to whom it would apply if employer were a private person.

Burden of payment.—Employer and every principal are jointly and severally liable for the compensations required under the act.

Compensation for death.—When death results from an injury for which a lump sum has not already been paid on account of permanent disability—

(a) A lump sum not exceeding three years' wages of deceased, nor more than £400 ($1,946.60), to those wholly dependent upon the workman's earnings.

(b) A lump sum not exceeding £200 ($973.30), to those partially dependent upon the workman's earnings; in the absence of persons totally dependent, the sum not to exceed the value of the support which they were receiving from the deceased, calculated for two years.

(c) Temporary payments previously made not to be deducted from above sums unless they have continued longer than three months.

(d) Reasonable expenses of medical attendance and burial not exceeding £40 ($194.66) in case deceased leaves no dependents.

Compensation for disability:

(a) A sum not exceeding three years' wages, less any payments received under a provisional order of court, but not exceeding £600 ($2,919.90) in case of permanent total disability, and a smaller sum in proportion to loss of earning power and not exceeding £300 ($1,459.95) in case of permanent partial disability.

(b) A payment made, by order of the local magistrate, at the same intervals as the customary wage payments, not exceeding 50 per cent of wages received at time of the injury, nor £2 ($9.73) per week if the injury causes temporary disability lasting more than three days.

Revision of compensation.—The provisional order may be set aside or altered by the magistrate, upon request of either party, if justified by a further examination of the injured person or by production of additional evidence.

Insurance.—Employers may insure in a company or association against personal injury to the workmen em-

ployed by them or in their behalf. If the employer contributes toward a benefit society of which the injured or deceased person is a member, allowance is made for such contribution by the court in its order or judgment fixing amount of compensation to be paid.

Security of payments.—When an employer or principal is adjudged or admits liability under the act and is entitled to any sum from any insurers on account of such liability, then, in the event the employer becomes insolvent, the worker or his dependents have a first claim upon such sum.

Settlement of disputes.—Compensation in cases of disability is fixed provisionally for not more than six months by the local magistrate after receiving a physician's certificate of disability and holding an inquiry. No appeal can be taken from this preliminary order except against a finding on the question of gross carelessness and then only upon leave granted by the superior court. In case the injury results in death or permanent disability, the claimants have a right of action in the local magistrate's court for the amounts due under the law. In fixing the amount, the court is required in every case to have regard to the workman's or the dependent's necessities.

§ 105. **Denmark schedule.**—Date of enactment.—January 7, 1898, in effect January 15, 1899; amended May 15, 1903.

Injuries compensated.—All injuries by accident occasioned by the trade or its conditions, and causing either death or disability lasting over thirteen weeks, unless brought on intentionally or through gross negligence of the victim.

Industries covered.—Practically all establishments in mining, quarrying, manufactures, building and engineering work, transportation, telephone and telegraph services. diving and salvage; establishments using

mechanical power which makes them subject to factory inspection; other industrial establishments designated by the minister of interior.

Persons compensated.—All workmen in mechanical and technical departments, including those in supervisory capacity whose annual earnings do not exceed 2,400 crowns ($643.20).

Government employés.—Act applies to all employés of state and the communal governments in industries above indicated.

Burden of payment.—Entire burden of payment rests upon employer.

Compensation for death:

(a) Funeral benefit of 50 crowns ($13.40).

(b) A lump sum equal to four times annual earnings of deceased, but not over 3,200 crowns ($857.60) nor less than 1,200 crowns ($321.60), to—

Widow, whole amount, if she survives.

Child, whole amount, if it be the only heir.

Children, according to decision of insurance council, when there is no widow.

If neither widow nor children, insurance council decides whether and how far other heirs receive compensation.

Compensation for disability:

(a) From end of thirteenth week after accident until end of treatment, or until disability is declared permanent, a daily compensation of 60 per cent of earnings, but not less than 1 crown (27 cents) nor over 2 crowns (54 cents) for total disability, and a proportionate compensation for partial disability.

(b) In case of permanent disability an indemnity of six times annual earnings, but not less than 1,800 crowns ($482.40) nor over

4,800 crowns ($1,286.40) for total permanent disability, and proportionate payments for partial permanent disability.

(c) If employé suffering from permanent disability is a male between 30 and 55 years of age, he may demand purchase of an annuity. For men of other ages, or of unsound mind, or women and children, the insurance council may substitute an annuity.

Revision of compensation.—Determination of degree of permanent disability must be made as soon as possible after one year from date of injury. If this be not possible, a temporary determination may be made, but a redetermination may be demanded within two years following.

Insurance.—Employers may transfer obligation imposed by the law, by insuring their employés in authorized insurance companies or mutual employers' insurance associations.

Security of payments.—Where liability under the law has not been transferred by insurance indemnity for disability is a preferred claim upon assets of employer.

Settlement of disputes.—Disputes concerning compensation, unless settled by mutual consent, must be referred to insurance council. Appeals may be had to the minister of interior.

§ 106. Finland schedule.

Date of enactment.—December 5, 1895, in effect January 1, 1898.

Injuries compensated.—All injuries by accident during work, causing death or disability for more than six days, except when brought on intentionally or through gross negligence of victim, intentionally by any other person than the one charged with supervision of the

work, or caused by some other occurrence utterly independent of the nature of conditions of work.

Industries covered.—Mines, quarries, metallurgical establishments, factories, sawmills, industrial establishments using mechanical power, construction of churches and buildings over one story high; construction and operation of water, gas, electric power plants, and operation of railroads.

Persons compensated.—All persons actually employed at work, but not those supervising only.

Government employés.—Act applies to employment on the state and communal construction works and state railways.

Burden of payment.—Entire burden of payment rests upon employer.

Compensation for death.—In addition to any prior payments on account of disability, pensions to dependent heirs, from day of death, not exceeding 40 per cent of annual earnings of deceased, to—

(a) Widow, 20 per cent until death or remarriage; in latter case a final sum equal to two annual payments.

(b) Each child until the age of 15 years, 10 per cent if one parent survives, and 20 per cent if neither parent survives.

(c) In computing pensions, earnings of workman to be considered not over 720 marks ($138.96) nor under 300 marks ($57.90); but no adult employé to receive a pension greater than his actual earnings.

Compensation for disability:

(a) A pension equal to 60 per cent of employé's earnings for total disability, or a pension proportionate to the degree of incapacity for partial disability, to be paid from day of recovery from illness due to injury, or after 120 days have elapsed since injury.

(b) Pension may by mutual consent be replaced by single payment, if it does not exceed 20 marks ($3.86) annually.

(c) In computing pension, earnings of workman to be considered not over 720 marks ($138.96) nor under 300 marks ($57.90); but no adult employé to receive a pension greater than his actual earnings.

(d) In cases of temporary disability (including all cases of disability for 120 days after injury) daily compensation of 60 per cent of earnings, beginning with seventh day after accident, for complete temporary disability, and a proportionate compensation for partial disability; but not more than 2.50 marks (48 cents) per diem.

(e) Until recovery, injured employé may be given treatment in a hospital in lieu of other compensation; during such treatment his wife and children get a compensation equal to pension in case of death.

Revision of compensation.—Demands for revision of compensation may be made by either party before proper court.

Insurance.—Employers are required to transfer the burden of payment of compensation to a governmental insurance office, private insurance company, mutual employers' insurance association, or approved foreign insurance company, unless unable to obtain such insurance or released from this obligation on presentation of satisfactory guarantees.

Security of payments.—When exempted from the duty of insuring his employés, or unable to obtain insurance, the employer must guarantee payment of pension to the injured workman or his family by arrangement with a private insurance company.

Settlement of disputes.—In case of absence of insurance or dissatisfaction with decision of insurance company, injured employé or his dependent may carry the case into the inferior court of the locality.

§ 107. French schedule.

Date of enactment.—April 9, 1898, in effect July 1, 1899; amendatory and supplementary acts March 22, 1902; March 31, 1905; April 12, 1906, and July 17, 1907.

Injuries compensated.—All injuries by accident to workmen or salaried employés during or on account of labor causing death or disability for five or more days, unless produced intentionally by the victim. If due to inexcusable fault of victim or of employer, compensation may by a court order be decreased or increased, but not exceeding actual earnings of victim.

Industries covered.—Building trades, factories, workshops, shipyards, transportation by land and water, public warehouses, mining and quarrying, manufacture or handling of explosives, agricultural and other work using mechanical power, and mercantile establishments; other industries on request of both parties.

Persons compensated.—All workmen and salaried employés.

Government employés.—Law applies to state, departmental, and communal establishments when engaged in industries enumerated above.

Burden of payment.—Entire cost of compensation falls upon employer.

Compensation for death:

(a) Funeral expenses not exceeding 100 francs ($19.30).

(b) Pensions to dependent heirs not exceeding 60 per cent of annual wages of deceased, distributed to—

Widow or widower, 20 per cent until death

or remarriage, in which latter case a final sum equal to three annual payments.

Children under 16 years of age, if one parent survives—15 per cent if there is but one child; 25 per cent if there are two children; 35 per cent if there are three children; 40 per cent if there are four or more children.

Each child under 16 years of age if neither parent survives, 20 per cent.

Each ascendant and each descendant under 16 years of age dependent upon deceased, if no widow or children survive, 10 per cent, the aggregate not to exceed 30 per cent.

(c) If annual wages exceed 2,400 francs (463.20), only one-fourth of the excess is considered in computing pensions.

Compensation for disability:

(a) Expenses of medical or surgical treatment.

(b) If permanently disabled, a pension of 66 2-3 per cent of annual wages for total disability and of one-half loss of earning capacity for partial disability; or, if demanded, one-fourth capital value of pension in cash, the pension to be reduced accordingly.

(c) If temporarily disabled, an allowance of 50 per cent of daily wages, beginning with fifth day, and including Sundays and holidays, unless disability lasts more than ten days, when payments become due from the first day.

(d) If annual wages exceed 2,400 francs ($463.20), only one-fourth of the excess is considered in computing pensions.

(e) Payments of pensions of not over 100 francs ($19.30) per annum may, by mu-

tual consent when beneficiary is of age, be replaced by a cash payment.

Revision of compensation.—Revision of compensation because of aggravation or diminution of disability of victim may be made within three years.

Insurance.—Employers may transfer burden of payment of compensation to approved mutual aid, accident insurance, or guaranty association, or, in case of pensions, to national accident insurance or national old-age pension funds.

Security of payments.—The state guarantees against loss of pension payments on account of insolvency of employers or insurance organizations, and is reimbursed by a special tax on employers within scope of the act. For temporary disability payments, medicines, and medical or surgical attendance, and funeral expenses of the victim, his creditors or representatives have a preferred claim on property of employer.

Settlement of disputes.—Disputes as to pensions or involving more than 300 francs ($57.90) may be carried into higher civil courts. Judgments of local justice of the peace is final in other cases.

§ 108. German schedule of compensation and scope of act.

Date of enactment.—July 6, 1884, in effect October 1, 1885. Supplementary acts May 28, 1885; May 5, 1886; July 11 and 13, 1887. A codification enacted June 30, 1900 and July 19, 1911.

Injuries compensated.—Injuries by accident in the course of the employment, causing death or disability for more than three days, unless caused intentionally. Compensation may be refused or reduced if injury was received while committing an illegal act.

Industries covered.—Mining, salt works, quarrying and allied industries, ship yards, factories, smelting works, building trades, chimney sweeping, window

cleaning, butchering, transportation and handling, agriculture, forestry, and fisheries.

Persons compensated.—All workmen, and those technical officials whose annual earnings are less than 3,000 marks ($714). With the approval of the Imperial Insurance Office the law may be extended to other classes.

Government employés.—Act covers government employés in postal, telegraph, and railway services and in industrial enterprises of army and navy, unless otherwise provided for.

Burden of payment.—Medical and surgical treatment for ninety-one days and benefit payments from third to ninety-first days are provided by sick-benefit funds, to which employers contribute one-third and employés two-thirds; from twenty-eighth to ninety-first day payments are increased by one-third at expense of employer in whose establishment accident occurred; after ninety-first day and in case of death from injuries expense is borne by employers' associations supported by contribution of employers.

Compensation for death:

(a) Funeral benefits of one-fifteenth of annual earnings of deceased, but not less than 50 marks ($11.90).

(b) Pensions to dependent heirs not exceeding 60 per cent of annual earnings of the deceased, as follows: Widow, 20 per cent of annual earnings until death or remarriage; in latter case a final sum equal to three annual payments; dependent widower, 20 per cent of annual earnings; each child 15 years of age or under, 20 per cent; payments to consort and to children to be reduced proportionately, if the total would exceed 60 per cent; dependent heirs in ascending line, 20 per cent or less, if there

is a residue after providing for above heirs; orphan grandchildren, 20 per cent or less, if there is a residue after providing for above heirs.

(c) If annual earnings exceed 1,500 marks ($357), only one-third of excess is considered in computing pensions.

Compensation for disability:

(a) Free medical and surgical treatment paid first thirteen weeks by sick-benefit funds, and afterwards by employers' associations.

(b) For temporary or permanent total disability, 50 per cent of daily wages of persons similarly employed, but not exceeding 3 marks (71 cents), paid by sick-benefit funds from third day to end of fourth week; from fifth to end of thirteenth week, above allowance by sick-benefit fund plus 16 2-3 per cent contributed by employer direct; after thirteen weeks, 66 2-3 per cent of average annual earnings of injured person paid by employers' associations.

(c) For complete helplessness, necessitating attendance, payments may be increased to 100 per cent of annual earnings.

(d) For partial disability, a corresponding reduction in payments.

(e) If annual earnings exceed 1,500 marks ($357), only one-third of excess is considered in computing pensions.

Revision of payments.—Whenever a change in condition of injured person occurs a revision of benefits may be made.

Insurance.—Payments are met by mutual insurance associations of employers, in which all employés are required to be insured at the expense of employers. Sep-

arate associations have been organized for each industry.

Security of payments.—Solvency of employers' associations is guaranteed by the state.

Settlement of disputes.—Disputes are settled by "arbitration courts for workingmen's insurance," composed of one government official, two representatives of workmen, and two of employers.

§ 109. Great Britain schedule.

Date of enactment.—December 21, 1906, in effect July 1, 1907; replacing acts of August 6, 1897, and July 30, 1900.

Injuries compensated.—Injuries by accident arising out of and in the course of employment which cause death or disability a workman for at least one week from earning full wages at the work at which he was employed. Compensation is not paid when injury is due to serious and willful misconduct, unless it results in death or serious and permanent disablement.

Industries covered.—"Any employment."

Persons compensated.—Any person regularly employed for the purposes of the employer's trade or business whose compensation is less than £250 ($1,216.63) per annum; but persons engaged in manual labor only are not subject to this limitation.

Government employés.—Act applies to civilian persons employed under the Crown to whom it would apply if the employer were a private person.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

(a) A sum equal to three years' earnings, but not less than £150 ($729.98) nor more than £300 ($1,459.95), to those entirely dependent on earnings of deceased.

(b) A sum less than above amount if deceased

leaves persons partially dependent on his earnings, amount to be agreed upon by the parties or fixed by arbitration.

(c) Reasonable expenses of medical attendance and burial, but not to exceed £10 ($48.67) if deceased leaves no dependents.

Compensation for disability:

(a) A weekly payment during incapacity of not more than 30 per cent of employé's average weekly earnings during previous twelve months, but not exceeding £1 ($4.87) per week; if incapacity lasts less than two weeks no payment is required for the first week.

(b) A weekly payment during partial disability, not exceeding the difference between employé's average weekly earnings before injury and average amount which he is earning or is able to earn after injury.

(c) Minor persons may be allowed full earnings during incapacity, but weekly payments may not exceed 10 shillings ($2.43).

(d) A sum sufficient to purchase a life annuity through the Post-office Savings Bank of 75 per cent of annual value of weekly payments may be substituted, on application of the employer, for weekly payments after six months; but other arrangements for redemption of weekly payments may be made by agreement between employer and employé.

Revision of benefits.—Weekly payments may be revised at request of either party, under regulations issued by the secretary of state.

Insurance.—Employers may make contracts with employés for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act

if the registrar of friendly societies certifies that the scheme is not less favorable to the workmen and their dependents than the provisions of the act, and that a majority of the workmen are favorable to the substitute. The employer is then liable only in accordance with the provisions of the scheme.

Security of payments.—In case of employer's bankruptcy, the amount of compensation due under the act, up to £100 ($486.65) in any individual case, is classed as a preferred claim; or where an employer has entered into a contract with insurers in respect of any liability under the act to any workman such rights of the employer, in case he becomes bankrupt, are transferred to and vested in the workman.

Settlement of disputes.—Questions arising under the law are settled either by a committee representative of the employer and his workmen by an arbitrator selected by the two parties, or, if the parties can not agree, by the judge of the county court, who may appoint an arbitrator to act in his place.

§ 110. Greek schedule of compensation and scope of act.

Date of enactment.—February 21 (March 6), 1901, in effect (retroactively) December 20, 1900 (January 2, 1901).

Injuries compensated.—All injuries by accidents during or because of the employment and causing death or disability lasting more than four days, unless brought on intentionally by the injured person.

Industries covered.—Mines, quarries, and metallurgical establishments.

Persons compensated.—All workingmen and subordinate salaried persons.

Government employés.—No mention of government employés is made in the law.

Burden of payment.—Employer carries full burden

payment of indemnities during first three months; ter three months, half the payments of pensions are ntributed by the miners' fund, which is mainly sup-orted by a tax on the mines and metallurgical estab-shments, but partly by contributions from the work-ngmen's mutual aid societies in these establishments nd some minor sources.

Compensation for death:

(a) If death occurs immediately or within three months: (1) Funeral expenses amounting to 60 drachmas ($11.58); (2) pensions to heirs aggregating pension paid for total disability.

(b) If death occurs three months after injury or later, pensions to heirs aggregating 75 per cent of pension paid during life of the injured.

(c) All pensions to heirs are distributed as follows: Equal share to widow and children, or, in absence of widow and children, equal share to father and mother.

(d) Pension to widow ceases on her remarriage; to male children at 16 years of age; to female children on their marriage, with payment of one year's pension as a dowry.

(e) If only one heir survives, he is entitled to only one-half of original pension.

Compensation for disability:

(a) Free medical and surgical treatment.

(b) An allowance of 50 per cent of earnings of injured employé during first three months.

(c) If permanently disabled, a pension of 50 per cent of earnings in case of total disability (including loss of a hand or foot); in case of partial disability, a pension of 33 1-3 per cent of earnings, pension payments to begin after end of third month.

(d) Pension may not exceed 100 drachmas ($19.30) per month plus 25 per cent of the excess of computed pension over 100 drachmas ($19.30).

(e) In computing pension of apprentices and children, no wage is to be considered less than 2.50 drachmas (48 cents) per day.

Revision of compensation.—Injured employé may present a new petition, or the council of the miners' fund may order a new examination, whenever there is reason to believe that changes have occurred in the degree of disability.

Insurance.—No provision is made by the law for the transfer of the burden of payment of compensation by insurance.

Security of payments.—The miners' fund guarantees payment of pensions and other allowances, and has preferred claim upon employer's assets in cases of dissolution or forced sale of establishment, and also in cases of voluntary transfer, unless the new proprietor assumes the obligations under the law.

Settlement of disputes.—Amount of pension is settled by the council of the miners' fund, and appeals against its decisions may be carried into the ordinary courts.

§ 111. Hungarian schedule.

Date of enactment.—April 9, 1907, in effect July 1, 1907.

Injuries compensated.—Injuries by accident in the course of the employment causing death or disability for more than three days. Injuries caused intentionally are not compensated unless fatal.

Industries covered.—All factories subject to inspection, mines, quarries, metallurgical establishments, building trades, lumbering, construction work, shipbuilding, slaughterhouses, pharmacies, sanatoria, theaters, institutes of art and science.

Persons compensated.—All employés in industries enumerated.

Government employés.—Act covers government employés in state, municipal, and communal industries enumerated above.

Burden of payment.—All benefits and cost of treatment for first ten weeks provided by sick funds to which employers and employés contribute equally. Beginning with eleventh week entire cost is defrayed by employers through the accident fund.

Compensation for death:

(a) Funeral benefit of twenty times average daily wages.

(b) Pensions to heirs not exceeding 60 per cent of annual earnings of deceased, as follows—

Widow, 20 per cent of annual earnings until death or remarriage; in latter case a final sum equal to 60 per cent of annual earnings; or to dependent widower 20 per cent during disability.

Each child 16 years of age or under, 15 per cent if one parent survives, 30 per cent if neither survives; payments to consort and children reduced proportionately if they aggregate more than 60 per cent.

Dependent parents and grandparents if there is a residue after providing for above heirs, 20 per cent or less.

Dependent orphan grandchildren 15 years of age or under, if there is a residue after providing for above heirs, 20 per cent or less.

(c) In computing pensions the excess of annual earnings above 2,400 crowns ($487.20) is not considered.

Compensation for disability:

(a) Free medical and surgical treatment pro-

vided first ten weeks by sick fund, and afterwards by accident fund.

(b) For temporary or permanent total disability, 50 per cent of average daily wages but not exceeding 4 crowns (81 cents) for first ten weeks, provided by sick fund; beginning with eleventh week, 60 per cent of average annual earnings, provided by accident fund.

(c) For complete helplessness necessitating attendance payments may be increased to 100 per cent of annual earnings.

(d) For partial disability a corresponding portion of full pension.

(e) In computing pensions the excess of annual earnings above 2,400 crowns ($487.20) is not considered.

Revision of compensation.—Whenever a change in condition of injured person occurs the accident fund or the injured person may ask for a revision of the benefits.

Insurance.—Payments are met by a state insurance institution, in which all employés are required to be insured at the expense of employers.

Security of payment.—Guaranteed by the state.

Settlement of disputes.—Disputes are settled by arbitration courts, consisting of a presiding judge and an equal number of representatives of workmen and employers.

§ 112. Italian schedule.

Date of enactment.—March 17, 1898, in effect September 17, 1898. Amended June 29, 1903. Promulgated in codified form January 31, 1904.

Injuries compensated.—All injuries sustained by workmen or salaried employés during or on account of labor. If due to wilful misconduct, employer may be reimbursed through criminal action.

Industries covered.—Mines, quarries, building trades; light, heat, and power plants; arsenals; maritime construction work; transportation; industries requiring the use or handling of explosives; all industrial or agricultural work in proximity to power machinery; where more than five persons are employed in engineering construction work; operations for protection against landslides, floods, hailstorms; logging and timber rafting, and shipbuilding.

Persons compensated.—All workmen and apprentices and overseers receiving not more than 7 liras ($1.35) per day and paid at intervals of one month or less.

Government employés.—Act applies to employment in state, provincial and communal industries enumerated above unless specially provided for, and to work performed for a government institution under contract or concession.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death.—If within two years after the accident, five times annual wages of deceased workman, with a maximum of 10,000 liras ($1,930), distributed to—

(a) Surviving consort two-fifths or indemnity if there are children; one-half of indemnity if there are dependent ascendants; three-fifths of indemnity if only dependent brothers or sisters; entire indemnity in absence of heirs enumerated.

Children, amounts sufficient to purchase an annuity of equal amount for each child under 12 years of age, and one-half of such annuity for each child from 12 to 18 years of age.

Each dependent parent or grandparent, if

there are no children, annuity of equal amount for life.

Dependent brothers or sisters less than 18 years of age or incapable of performing labor by reason of a mental or physical defect, if there are no children or dependent ascendants, annuities distributed upon same principle as in case of children.

(b) In absence of heirs indemnity is turned into a special fund for immediate aid to injured, payment of indemnities for insolvent employers, and prevention of accidents.

Compensation for disability:

(a) Cost of first medical and surgical treatment.

(b) An indemnity in case of permanent disability or six times annual earnings, but not less than 3,000 liras ($579) if totally disabled, and six times the loss of annual earning capacity if partially disabled, earnings in latter case to be considered as not less than 500 liras ($96.50).

(c) A daily allowance in case of temporary disability of one-half the wages of injured workman, payable for not more than three months, if totally disabled, and equal to one-half the reduction in wages occasioned by the injury, if partially disabled.

Revision of compensation.—Both workman and insurer may ask for a revision of compensation within two years after accident.

Insurance.—Employers must insure their employés in (a) the national accident insurance fund, (b) an authorized insurance company, (c) an association of employers for mutual insurance against accidents, or (d) a private employers' insurance fund.

Security of payments.—Payments are guaranteed by state.

Settlement of disputes.—In cases of dispute concerning temporary disability payments, the council of prudhommes or the pretor of the locality in which the accident occurred has authority to sit in final judgment if amount involved does not exceed 200 liras ($38.60). Disputes involving larger amounts are referred for settlement to the local magistrates.

§ 113. Luxemburg schedule.

Date of enactment.—April 5, 1902, in effect April 15, 1903. Sick insurance law enacted July 31, 1901.

Injuries compensated.—All injuries by accidents during or because of the employment, resulting in death or disability for more than three days, unless caused intentionally by the victim or during the commission of an illegal act.

Industries covered.—Mines, quarries, manufactories, metallurgical establishments; gas and electric works; transportation and handling; building and engineering construction, and certain artisans' shops having at least five employés regularly and using mechanical motive power. By administrative order other establishments may become subject to the law if regarded dangerous.

Persons compensated.—Workmen and those supervising and technical officials whose annual earnings are less than 3,000 francs ($579). Certain other classes of persons may be voluntarily insured.

Government employés.—Act applies to government telegraph and telephone services, public works conducted by public agencies, and other governmental industrial establishments, unless other provisions are made for pensioning employés. Penal institutions are not included.

Burden of payment.—Benefits and cost of treatment first thirteen weeks provided by sick benefit funds, to which employers contribute one-third and employés two-thirds, if injured person is insured against sickness;

if not, because employed less than one week, by an accident insurance association supported by contributions of employers; if not insured for other reasons, by the employer direct; all benefits and treatment after thirteen weeks paid by accident insurance association.

Compensation for death:

(a) Funeral expenses, one-fifteenth of the annual earnings, but not less than 40 francs ($7.72) nor more than 80 francs ($15.44).

(b) Pensions, not to exceed 60 per cent of earnings of deceased, to—

Widow, 20 per cent until death or remarriage; in the latter case a lump sum equal to 60 per cent; same payment to a dependent widower.

Each child, 20 per cent until 15 years of age, even if father survives, provided he abandoned them, or the mother who was killed was their main support.

Dependent heirs in an ascending line, 20 per cent.

Dependent orphan grandchildren, 20 per cent until 15 years of age.

Widow and children have the preference over other heirs.

(c) In computing pensions only one-third of excess of annual earnings over 1,500 francs ($289.50) is considered.

Compensation for disability:

(a) Entire cost of medical and surgical treatment.

(b) For temporary or permanent total disability, from third day to end of fourth week, 50 per cent, and from fifth to end of thirteenth week, 60 per cent of wages of persons similarly employed; after thirteen

weeks, 66 2-3 per cent of annual earnings of injured person.

(c) For partial disability a portion of above (depending upon degree of disability), which may be increased to full amount as long as injured employé is without employment.

(d) Lump sum payments may be substituted for pensions when degree of disability is not greater than 20 per cent.

(e) In computing pensions only one-third of excess of annual earnings over 1,500 francs ($289.50) is considered.

Revision of compensation.—Demands for change of amount of compensation may be made within three years.

Insurance.—Payments are met by mutual accident insurance association of employers in which all employés must be insured at expense of employers.

Security of payments.—Insurance association conducted under state supervision.

Settlement of disputes.—Appeals from the decisions of the association may be carried within forty days to a justice of the peace, who is required to invite two delegates, representing employer and employé, to assist in an advisory capacity. Further appeals may be taken to the higher courts.

§ 114. Netherlands schedule.

Date of enactment.—January 2, 1901, in effect June 1, 1901. Other acts February 3 and December 8, 1902, and July 24, 1903.

Injuries compensated.—All injuries caused by accident in the course of the employment and causing death or disability for over two days, unless brought on intentionally. If due to intoxication, compensation is reduced one-half, and if death results no compensation is paid.

Industries covered.—Practically all manufacturing, mining, quarrying, building, engineering construction, and transportation; fishing in internal waters; establishments using mechanical motive power, or explosive or inflammable materials, and mercantile establishments handling such materials.

Persons compensated.—All workmen, including apprentices.

Government employés.—All state, provincial, and communal employés are included when engaged in any of the industries enumerated.

Burden of payment.—The entire expense rests upon the employer.

Compensation for death:

(a) Funeral benefit of thirty times average daily earnings of deceased.

(b) Pensions to heirs of not over 60 per cent of earnings of deceased, distributed to—

Widow, 30 per cent of earnings, until death or remarriage; in latter case two years' payments as a settlement; or to dependent widower, a pension equal to cost of support, but not over 30 per cent of earnings of deceased.

Each child under 16 years of age, 15 per cent if one parent survives and 20 per cent if both are dead.

Dependent parents, and in their absence to grandparents, not over 30 per cent.

Orphan grandchildren, not over 20 per cent.

Dependent parents-in-law, not over 30 per cent.

Widow and children to be preferred over all other heirs, and their respective shares to be reduced proportionately when aggregating over 60 per cent.

(c) In computing pensions, wages higher than

four florins ($1.61) per day are to be considered as of that amount.

Compensation for disability:

(a) Free medical and surgical treatment, or its cost.

(b) From day after injury until forty-third day, an allowance of 70 per cent of daily earnings, excluding Sundays and holidays.

(c) From forty-third day a pension of above amount during total disability and a smaller pension in proportion to loss of earning power if partially disabled.

(d) In computing pensions, wages higher than four florins ($1.61) per day are to be considered as of that amount.

Revision of compensation.—An examination of condition of victim may be made whenever the Royal Insurance Bank so desires.

Insurance.—Employers may insure their employés in the Royal Insurance Bank (a state institution), in a private company or association operating under state supervision, or they may carry the burden themselves. If not insured in the Royal Insurance Bank, a sufficient guaranty must be deposited with the latter. Employers must bear a proportionate share of the expense of administration of the Royal Insurance Bank, whether they insure in it or not.

Security of payments.—Compensation payments are guaranteed by the state.

Settlement of disputes.—Appeals may be taken from decisions of the Royal Insurance Bank to local arbitration councils, in which employers and employés are equally represented, and from them to a central arbitration council whose decisions are final.

§ 115. New Zealand schedule.

Date of enactment.—October 18, 1900, to take effect

at a date fixed by the governor by order in council. Amended October 3, 1902, November 23, 1903, November 8, 1904, October 31, 1905, and October 29, 1906.

Injuries compensated.—All injuries to workmen arising out of and in the course of the employment causing death or disability for at least one week, except when due to serious and willful misconduct of the workman injured.

Industries covered.—Industrial, commercial, manufacturing, building, agricultural, pastoral, mining, quarrying, engineering, and hazardous work carried on by or on behalf of the employer as a part of his trade or business.

Persons compensated.—All persons under contract with an employer.

Government employés.—Act applies to work carried on by or on behalf of the government or any local authority if it would, in case of a private employer, be an employment to which the act applies.

Burden of payment.—Entire cost of compensation rests upon employer; but if there are contractors, then on such contractors and the principal, jointly and severally.

Compensation for death:

(a) A sum equal to three years' earnings, but not less than £200 ($973.30) nor more than £400 ($1,946.60), to those wholly dependent upon earnings of deceased.

(b) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by a magistrate or by the arbitration court.

(c) Reasonable expenses of medical attendance and burial, not exceeding £30 ($146), in case deceased leaves no dependents.

Compensation for disability:

(a) A weekly payment during disability not ex-

ceeding 50 per cent of employé's average weekly earnings during the previous twelve months, but not to exceed £2 ($9.73) nor to fall below £1 ($4.87) where employé's ordinary rate of pay at time of accident was not less than 30 shillings ($7.30) per week. Total liability of employer is limited to £300 ($1,459.95). No payment is made for first week if disability does not continue for a longer period than two weeks.

(b) A lump sum may be substituted for weekly payments for permanent total or partial disability, to be agreed on by the parties or, in default of agreement, determined by the court of arbitration.

Revision of benefits.—Weekly payments may be revised at request of either party.

Insurance.—Employers may contract with their employés for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act if the scheme is shown to be not less favorable to the general body of employés and their dependents than the provisions of the act. In such case the employer is liable only in accordance with the scheme.

Security of payments.—When an employer becomes liable under this act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of his becoming insolvent, such workman has a first claim upon this sum. Compensation for injuries sustained in the course of employment in or about a mine, factory, building, or vessel is deemed a charge upon the employer's interest in such property and has priority over all charges other than those lawfully existing at the time of the commencement of the act.

Settlement of disputes.—Disputes arising under the

act are settled by the court of arbitration under the industrial arbitration act. Where claim for compensation does not exceed £200 ($973.30) proceedings may be instituted before a magistrate whose decision is final, except that in cases where amount involved does not exceed £50 ($243.33) either party may, with the consent of the magistrate, and in cases where the claim exceeds £50 ($243.33), without such consent, appeal from the decision on any point of law.

§ 116. Norwegian schedule of compensation and scope of act.

Date of enactment.—July 23, 1894, in effect July 1, 1895.

Injuries compensated.—All injuries by industrial accidents, causing death, or disability, for more than four weeks, or requiring treatment after that period, unless intentionally brought about by the injured person.

Industries covered.—Practically all factories and workshops using other than hand power; mines and quarries; the handling of ice, explosives, or inflammable wares; building and engineering construction, electric work, transportation, salvage, and diving, chimney sweeping, and fire extinguishing. Employés in other industries may avail themselves of this insurance system.

Persons compensated.—All workingmen and overseers.

Government employés.—Act covers employés in government or communal service, when engaged in any of the industries enumerated above, unless at least equal compensation is provided by special regulation.

Burden of payment.—Cost of compensation rests upon employer.

Compensation in case of death:

(a) Funeral benefit of 50 crowns ($13.40).

(b) Pensions to heirs not exceeding 50 per cent of earnings, to be distributed to—

Widow, 20 per cent of earnings, until death or remarriage; in the latter case a lump sum equal to three annual payments; or dependent widower, 20 per cent of annual earnings of deceased while disability lasts.

Each child, 15 per cent of annual earnings till age of 15 years if one parent survives, or 20 per cent if neither survives; 15 per cent for each parent to each child when both parents have died as result of injuries.

Dependent relatives in ascending line, if there is a residue after providing for above-mentioned heirs, a pension of 20 per cent of earnings until death or cessation of need, to be divided equally; but living parents exclude grandparents from participation.

(c) In computing pensions, the excess of annual earnings over 1,200 crowns ($321.60) is not considered.

(d) Pension payments are in addition to prior allowances granted for disability.

Compensation for disability:

(a) Free medical and surgical treatment, or cost of same, after four weeks.

(b) If employé is totally disabled for more than four weeks an allowance of 60 per cent of the earnings, but not less than 0.50 crowns (13 cents) per diem or 150 crowns ($40.20) per annum; and a proportionate allowance in case of partial disability.

(c) If injured employé is forced to stay in a hospital, dependents receive allowances during that time equal to the pensions granted in cases of death.

(d) If injured employé is not a member of a sick insurance fund he is entitled to receive

from employer directly sick benefits and free medical treatment from first day of injury.

(e) In computing allowances the excess of annual earnings over 1,200 crowns ($321.60) is not considered.

Revision of compensation.—Compensation is subject to revision upon demand of either the beneficiary or the insurance office.

Insurance.—A state central insurance office is established for the entire Kingdom, in which all employés subject to the law must be insured by employer, unless he is, for special reasons, relieved by royal order from the obligation of insurance.

Security of payments.—Insurance office is guaranteed by the state.

Settlement of disputes.—Appeals from decisions of insurance office may be entered within six weeks with the special insurance commission.

§ 117. Queensland schedule of compensation and scope of act.

Date of enactment.—December 20, 1905, in effect March 31, 1906.

Injuries compensated.—All injuries by accident, arising out of and in the course of the employment, which cause death or disable a workman for at least two weeks from earning full wages at the work at which he was employed, except when the injury is directly attributable to his serious and wilful misconduct, or when it occurs while proceeding to or from his place of work.

Industries covered.—Industrial, commercial, manufacturing, building, agricultural, pastoral, mining, quarrying, engineering, or hazardous work carried on by or on behalf of the employer as a part of his trade or business.

Persons compensated.—All persons under contract with an employer.

Government employés.—Act applies to any work carried on by or on behalf of the government or any local authority, if it would, in case of a private employer, be an employment to which the act applies.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

(a) A sum equal to three years' earnings, but not less than £200 ($973.30) nor more than £400 ($1,946.60), to those wholly dependent upon earnings of deceased; but aged and infirm employés may agree in advance to accept a reduced amount.

(b) A sum less than above if heirs are only partly dependent.

(c) Reasonable expenses of medical attendance and burial, not exceeding £30 ($146), if deceased leaves no dependents.

Compensation for disability:

(a) A weekly payment during disability after second week, not exceeding 50 per cent of employé's average weekly earnings during the previous twelve months, such weekly payments not to exceed £1 ($4.87), and total liability not to exceed £400 ($1,946.60); except that aged and infirm employés may agree in advance to accept a reduced amount.

(b) A weekly payment during partial disability after second week, not exceeding one-half of difference between the employé's average weekly earnings before the accident and the average weekly amount which he is earning or able to earn after injury.

(c) Minors may be allowed full earnings during incapacity, not exceeding 10 shillings ($2.43) weekly.

(d) A lump sum may be substituted for weekly payments after three months, on application of employer, the amount to be agreed upon or, in default of agreement, to be determined by a police magistrate.

Revision of compensation.—Weekly payments may be revised by a police magistrate at request of either party.

Insurance.—Employers may contract with their employés for substitution of a scheme of compensation, benefit, or insurance, in place of the provisions of the act if the scheme is officially certified to be not less favorable to the employés and their dependents than the provisions of the act. In such case the employer is liable only in accordance with the scheme.

Security of payments.—When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a worker under such liability, then in the event of his becoming insolvent, such workman has a first claim upon this sum for the amount so due.

Settlement of disputes.—Disputes arising under the act are heard and determined by a police magistrate, whose decision is final, except that either party may appeal from this decision on any point of law with the latter's leave if the claim does not exceed £50 ($243.33), or without his leave if it exceeds that amount.

§ 118. Russian schedule.

Date of enactment.—June 2 (15), 1903, in effect January 1 (14), 1904.

Injuries compensated.—All injuries by accident occasioned by or on account of the work and causing death or disability for more than three days, unless brought on intentionally by the victim or due to gross imprudence.

Industries covered.—Metallurgical and mining es-

tablishments and factories and workshops using other than hand power, but exclusive of shops of private railroad and steamship companies and certain rural industrial establishments.

Persons compensated.—Workmen and those technical officials whose annual earnings do not exceed 1,500 rubles ($772.50).

Government employés.—Act applies to mining, metallurgical, and manufacturing establishments of municipal and zemstvo governments, but not to national government employés, for whom special regulations exist.

Burden of payment.—Entire burden of payment rests upon employer.

Compensation for death:

(a) Funeral expenses not exceeding 30 rubles ($15.45) for an adult and 15 rubles ($7.73) for a child under 15 years of age.

(b) Pensions to dependent heirs not exceeding 66 2-3 per cent of annual earnings of victim, distributed to—

Widow, 33 1-3 per cent until death or remarriage; in the latter case a lump sum equal to three annual payments.

Each child until age of 15 years, 16 2-3 per cent if one parent survives and 25 per cent if neither parent survives.

Dependent heirs in ascending line, 16 2-3 per cent.

Each dependent orphan brother and sister until 15 years of age, 16 2-3 per cent.

Widow and children take precedence over other dependent heirs, who share the remainder in equal parts.

(c) Pension may, by mutual consent of employer and beneficiary, be replaced by single payment of ten times amount of an-

nual pension and, in case of children, pension multiplied by the number of years remaining for pension payments, but not exceeding ten.

Compensation for disability:

(a) Free medical and surgical treatment or reimbursement of expense of same.

(b) If permanently disabled, a pension of 66 2-3 per cent of annual earnings of victim in case of total disability, and a pension proportionate to degree of incapacity in case of partial disability, to be paid from time when degree of permanent disability was determined; if amount of pension exceeds that of previous allowance for temporary disability, difference between the two during the period of disability is paid to permanently injured employé.

(c) Pension may, by mutual consent of employer and beneficiary, be replaced by a single payment of ten times amount of annual pension.

(d) If temporarily disabled, an allowance of 50 per cent of actual wages of victim from day of accident until complete recovery from disability or the determining of degree of permanent disability.

Revision of compensation.—Demands for revision of payments or to secure a pension previously refused may be made by either party within three years.

Insurance.—Employers may transfer burden of payment of compensation by insuring their employés in authorized insurance companies or societies.

Security of payments.—On retiring from business employer must guarantee payments by insurance or by deposit with a state bank. In case of insolvency, payments constitute a preferred claim.

Settlements of disputes.—Disputes may be carried into courts as other civil cases. Such cases are exempt from court fees, the documents are free from stamp tax, and attorney's fees are fixed by law.

§ 119. South Australian schedule.

Date of enactment.—December 5, 1900, in effect not earlier than June 1, 1901.

Injuries compensated.—All injuries to workmen arising out of and in the course of the employment causing death or disability for at least one week, except when due to serious willful misconduct of the workman injured.

Industries covered.—Railways, waterworks, tramways, electric lighting works, factories, mines, quarries, engineering and building work, employments declared by a proclamation of the governor upon addresses from both houses of parliament to be dangerous or injurious to health or dangerous to life or limb, and agricultural pursuits where mechanical motive power is used.

Persons compensated.—All persons engaged in manual labor or otherwise.

Government employés.—Act applies to civilian persons employed under the Crown to whom it would apply if the employer were a private person.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

(a) A sum equal to three years' earnings, but not less than £150 ($729.98) nor more than £300 ($1,459.95), to those wholly dependent upon earnings of deceased.

(b) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by arbitration.

(c) Reasonable expenses of medical attendance

and burial not exceeding £50 ($243.33), if deceased leaves no dependents.

Compensation for disability:

(a) A weekly payment during disability after first week, not exceeding 50 per cent of employé's average weekly earnings during the previous twelve months, such weekly payments not to exceed £1 ($4.87) nor, in case of total incapacity, to be less than 7s. 6d. ($1.83) per week, and total disability not to exceed £300 ($1,459.95)

(b) A weekly payment during partial disability after first week to be fixed with regard to difference between employé's average weekly earnings before the accident and average weekly amount which he is earning or able to earn after injury.

(c) A lump sum not exceeding £300 ($1,459.95) may be substituted for weekly payments, after six months, on application of either party, the amount to be settled by arbitration under the act in default of agreement.

Revision of benefits.—Weekly payments may be revised at request of either party.

Insurance.—Employers may contract with their employés for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the public actuary certifies that the scheme is on the whole not less favorable to general body of employés and their dependents than the provisions of the act. In such case employer is liable only in accordance with the scheme.

Security of payments.—When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of

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bank to be applied to payment

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s enumerated above.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death.—When death results from the injury within two years—

(a) Funeral benefit of 60 crowns ($16.08).

(b) Annual pensions not exceeding in the aggregate 300 crowns ($80.40), to be distributed to widow, until remarriage 120 crowns ($32.16); each child under 15 years of age, 60 crowns ($16.08).

Compensation for disability:

(a) If permanently disabled annual pension of 300 crowns ($80.40) in case of total disability and a smaller sum, corresponding to loss of earning power in case of partial disability, pension to begin with sixty-first day of disability, or later if permanent character of the disability was not then established.

(b) If temporarily disabled for more than sixty days, 1 crown (27 cents) per day, beginning with sixty-first day.

Revision of compensation.—Suit may be brought in a court of first instance by injured employé for a revision of compensation within two years from the date of the fixing of the same.

Insurance.—If an injured person receives an allowance or pension from an organization which is supported entirely or in part by the employer, or if the victim is insured in a private organization by his employer, the amounts received from such source may be deducted from payments required of employers under the act. Employers may transfer burden of payment of compensation by insuring in the State Insurance Institute created for this purpose by the act, or in individual [redacted] purchase annuities for pensioners from this insti[redacted] Other arrangements may be made between [redacted]

and employés if the State Insurance Institute finds upon examination that they are not unfavorable to the employés.

Security of payments.—An employer may be required to furnish adequate security for the payment of the pension to cover the contingency of his neglecting to pay the same, of his retiring from business or leaving the country, or of his becoming insolvent. If he fails to furnish security he may be required to pay a lump sum equal to the capital value of the pension plus the payments and interest due, which amount, in the case of an injured employé, must be invested in the purchase of an annuity from the Royal Insurance Institute.

Settlement of disputes.—Disputes may be settled either by arbitration or by bringing suit in a court of first instance. The demand for arbitration must be made or the suit brought within two years after the accident, or, in case of fatal accidents, within two years after the death of the victim. If the action is against the State Institute, one year more is allowed.

§ 121. Spanish schedule.

Date of enactment.—January 30, 1900, in effect July 28, 1900.

Injuries compensated.—All injuries by accidents to employés in the course of and by reason of the employment causing death or disability. Compensation may be reduced if injured person was engaged in an illegal act.

Industries covered.—Manufacturing, mines, quarries, metallurgical establishments, construction work, industries injurious to health, transportation, gas and electric works, street cleaning, theatres, and agricultural and forestry establishments using power machinery.

Persons compensated.—Workmen performing manual labor, including helpers and apprentices.

Government employés.—Act applies to employés of

state factories and other government establishments, to labor accidents in war and naval departments, and to establishments of provincial and communal governments.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death.—In addition to any prior benefits paid for disability—

(a) Funeral expenses not exceeding 100 pesetas ($19.30).

(b) A lump sum equal to two years' earnings if widow and children or dependent orphan grandchildren under 16 years survive; eighteen months' earnings if only children or orphan grandchildren survive; one year's earnings if only widow survives; ten months' earnings to dependent parents or grandparents over 60 years of age, in absence of widow or children, if two or more survive; seven months' earnings if only one parent or grandparent survives.

(c) For these lump-sum payments, by mutual consent, the following pensions may be substituted: Forty per cent of annual earnings when widow and children or grandchildren survive; 20 per cent of annual earnings when only widow survives; 10 per cent to each dependent parent or grandparent over 60 years of age, when no widow or children survive, but not over 30 per cent in the aggregate; compensation to widow ceases on her remarriage and to children on their attaining the age of 16 years.

(d) In these cases the daily earnings to be considered as not less than 1.50 pesetas (29 cents).

(e) All of these compensations are increased by 50 per cent if the establishment is lacking in the required safety provisions.

Compensation for disability:

(a) Free medical and surgical treatment during disability.

(b) Fifty per cent of daily earnings, including Sundays and holidays, from day of injury to day of recovery from disability, but not over one year, after which case is treated as one of permanent disability.

(c) In case of permanent disability, in addition to the foregoing, a sum equal to two years' earnings for total disability.

Eighteen months' earnings if total disability extends only to former trade.

One year's earnings in cases of partial permanent disability for usual employment, unless the employer agrees to employ injured workmen at some other work at old rate of wages.

(d) In these cases the daily earnings to be considered as not less than 1.50 pesetas (29 cents).

(e) Compensations are increased by 50 per cent if the establishment is lacking in the required safety provisions.

Revision of compensation.—No special provision is made in the law.

Insurance.—Employers may contract with authorized insurance companies to assume obligations imposed by law.

Security of payment.—No special provision is made in the law.

Settlement of disputes.—Disputes concerning compensation under the law may be carried to special perma-

nent labor tribunals consisting of representatives of the State, employers, and employés.

§ 122. West Australia schedule of compensation and scope of act.

Date of enactment.—February 19, 1912, in effect on a date fixed by the governor by order in council.

Injuries compensated.—All injuries caused to a workman arising out of and in the course of the employment causing death or disability for at least two weeks, except when due to serious and wilful misconduct of the workman injured.

Industries covered.—Railways, waterworks, tramways, electric-light plants, factories, mines, quarries, engineering and building work, and employments declared by a proclamation of the governor, issued pursuant to addresses from both houses of parliament, to be dangerous or injurious to health or dangerous to life or limb.

Persons compensated.—All persons engaged under contract in any employment.

Government employés.—Act applies to all persons employed under the Crown to whom it would apply if employer were a private person.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

(a) A sum equal to three years' earnings, but not less than £200 ($973.30), nor more than £400 ($1,946.60), to those wholly dependent upon earnings of deceased.

(b) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by local court.

(c) Reasonable expenses of medical attendance

and burial, not to exceed £200 ($485.65), if deceased leaves no dependents.

Compensation for disability:

(a) A weekly payment during disability after second week, not exceeding 50 per cent of injured person's average weekly earnings during the previous twelve months, such weekly payment not to exceed £2 ($9.73) and total liability not to exceed £300 ($1,459.95).

(b) In case of partial disability, regard is to be had to the difference between average weekly earnings before and after the accident and to any payment other than wages made by employer on account of the injury.

(c) A lump sum may be substituted for weekly payments, after six months, on the application of the employer, the amount to be determined by the court in default of agreement.

Revision of benefits.—Weekly payments may be revised by the court at request of either party.

Insurance.—Employers may contract with their employés for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the registrar of friendly societies certifies that the scheme is on the whole not less favorable to the general body of employés and their dependents than the provisions of the act. In such case employer is liable only in accordance with this scheme.

Security of payments.—When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurer on account of the amount due to a workman under such liability, then in the event of his becoming insolvent such workman has a first charge upon this sum for the amount so due. Compensation

for injuries sustained in the course of employment in or about a mine, factory, building, or vessel is deemed a charge on the employer's interest in such property.

Settlement of disputes.—Disputes arising under the act are settled by the local court of the district in which the injury is received.

CHAPTER X.

THE WASHINGTON WORKMEN'S INSURANCE ACT.

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165. Review of the first eight months' operation of act.
166. Official state safety bulletin.

§ 123. The nature and scope of the Washington industrial insurance act.—The Washington Act covers all employers and employés of forty-eight extra hazardous employments which are specified in the act, and the act is compulsory in form as to all such employers and employés. All civil actions and civil causes of actions for personal injuries and all jurisdictions of the courts of the State over causes of action arising in said employments are abolished. This act, which is an example of progressive legislation along these lines, is set out in full in the following section, together with the Notes of Construction under each section of the same drafted by the commissioners. Since the constitutionality of the act has been sustained by the Supreme Court of the State (see section 127) these notes have the same binding effect upon all persons affected by the statute as the statute itself until overruled by the courts.

§ 124. The workmen's insurance act with its construction by the board.

Sec. 1. Declaration of police power.—The com-

mon-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the State depends upon its industries, and even more upon the welfare of its wageworker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents, is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the State over such causes are hereby abolished, except as in this act provided.

Note by board.—The abolishing of jurisdiction of courts over personal injury claims applies only to those in the relation of employer and employé in "extra hazardous" occupations. Employés as members of the public have their rights against third persons as heretofore. Suits allowed against employer, see Sec. 8. Even though the injury or death be caused by the tort of a third person, the employé may obtain compensation by election and assignment, except where a wilful act of such other, committed against the employé, be for reasons personal and not because of his employment.

Sec. 2. Enumeration of extra hazardous works.—There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is in-

tended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the State, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

Note by Board.—Admiralty Jurisdiction, see Sec. 18.

Unlisted extra hazardous occupations will be included in existing classes whenever possible. Obviously, accidents in new and small classes might bankrupt employers included therein. Non-hazardous elective, Class 48.

Sec. 3. Definitions.—In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals; electric, steam or water power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this State in any extra hazardous work.

Note by board.—Employer includes owner, contractor, sub-

contractor, agent, municipality, see Sec. 17. Residence outside the State immaterial.

This act has no application where the United States is the employer. (Opinion Attorney General, Sept. 20, 1911.)

Workman means every person in this State, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: Provided, however, That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the State for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Note by board.—Not in course of employment: Employer injured going to supper down log chute; employé left moving work train to enter saloon, injured attempting to regain train with bottles of beer; telephone lineman falling on wet steps going to lunch.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Note by board.—Such person, including partners and stockholders, may elect to come under the act.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz.: invalid child over the age of sixteen years, daughter, between sixteen and eighteen years of age, father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens, other than father or mother, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

Note by board.—Includes a step-child.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

Note by board.—Recent medical texts indicating that hernia

(rupture) ordinarily develops gradually, rarely as a result of accident, the department rules that a workman in order to be entitled to indemnity for hernia must clearly prove:

(1) The hernia is of recent origin;

(2) It must have been accompanied by pain;

(3) It must have been immediately preceded by some accidental strain in the course of hazardous employment;

(4) There must be conclusive proof that it did not exist prior to the date of the alleged injury.

In case the individual elects to be operated on, the above facts being established, one month total disability only will be allowed for recovery with compensation not to exceed 60% of wages in addition to the scale lump sum.

In case he does not elect to be operated upon, and the hernia becomes strangulated in the future, the results from said strangulation will not be indemnified.

Sec. 4. Schedule of contribution.—Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the State treasury, in accordance with the following schedule, a sum equal to a percentage of his total payroll for that year,* to-wit: (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

Construction Work.

Tunnels; bridges; trestles; sub-aqueous works; ditches and canals (other than irrigation without blasting); dock excavation; fire escapes; sewers; house moving; house wrecking	.065
Iron, or steel frame structures or parts of structures	.080
Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads	.050
Steeples, towers or grain elevators, not metal framed; dry-docks without excavation; jetties; breakwaters; chimneys; marine railways; water-works or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters	.050
Steam heating plants; tanks, water towers or windmills, not metal frames	.040
Shaft sinking	.060

*Act amended before passage requiring payment each month after Dec. 31, 1911, if funds on hand are deemed insufficient.

Concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin works; gas works, or systems; marble, stone or brick work; road making with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys ..... .050

Excavations not otherwise specified; blast furnaces..... .040

Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings..... .035

Ship or boat building or wrecking with scaffolds; floating docks ..... .045

Carpenter work not otherwise specified..... .035

Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified..... .030

Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making..... .020

The absence of power driven machinery does not exempt occupations named in this subdivision, nor the small number of employés engaged, nor the short time required to accomplish the work.

Operation (including repair work) of

(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks .050

Electric light or power plants; interurban electric railroads not using third rail system; quarries..... .040

Street railways, all employés; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries..... .030

Mines, other than coal; steam heating or power plants..... .025

Grain elevators; laundries; waterworks; paper or pulp mills; garbage works..... .020

Factories Using Power-Driven Machinery.

Stamping tin or metal	.045
Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel, keg; pail; basket; tub; wooden ware or wooden fibre ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without Machinery; canneries, metal stamping extra; creosoting works; pile treating works	.025
Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware; peat fuel; brickettes	.020
Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified	.020
Cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified	.015
Making jewelry, soap, tallow, lard, grease, condensed milk	.015
Creameries; printing; electrotyping; photo-engraving; engraving; lithographing	.015

Miscellaneous Work.

Stevedoring; longshoring	.030
Operating stock yards, with or without railroad entry; packing houses	.025
Wharf operation; artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified	.020
Theater stage employés	.015
Fire works manufacturing	.050
Powder works	.100

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the payroll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the

actual payroll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated payroll, an adjustment shall be made on or before February 1st of the following year in the manner above provided.

Note by board.—Preliminary payment on an estimated payroll required of new establishments, thereafter as assessed.

An establishment or business permanently dismantled or abandoned does not forfeit its "unearned premiums," but is entitled to a return of the excess payment by warrant against the Accident Fund. (Opinion Attorney General, Jan. 9, 1912.)

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: Provided, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments, said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund.

Note by board.—The provision for non-assessment of premium does not seem equitably to apply to owners and contractors in construction work (Classes 1 to 9, inclusive). Continuous monthly contribution is required to place operators in such work on the

same competitive plane as to bidding, advance ordering of material, etc., each contract thus providing for its average quota of injuries.

The intent of the law is that each of the forty-seven funds be automatic and self-adjusting. The rate is fixed; time of payment varies with the need. The actual premium (percentage of payroll) cannot be determined in advance. The proviso here was inserted as an amendment to the original bill; the first paragraph of Sec. 4, so far as inconsistent, to be disregarded.

The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross misdemeanor.* If, after this act shall have come into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of

*Gross misdemeanor—penalty, imprisonment in county jail not more than one year, or by a fine not to exceed one thousand dollars or both. Rem. and Bal. Code, Sec. 2267; Sec. 15, Chap. 249, Laws 1909. The workman contributes nothing under this act; see Sec. 24.

work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

Note by board.—Contribution by employés to a Hospital Fund of an establishment not prohibited by this section; such funds to provide resident physician in remote camps, and procure first aid and competent care in sickness and injury. See Secs. 12, 13, 24.

For the purposes of such payment and making good of deficit the particular classes of industry shall be as follows:

Construction Work.

Class 1. Tunnels; sewer; shaft sinking; drilling wells.

Note by board.—Includes all underground work of whatever character in connection with sewer construction, includes tunneling and shafting and work at the entrances thereof; also such work in open trenches exceeding six feet in depth, but not "excavations" as hereinafter defined.

"Excavations," rate 4 per cent.: Ditches less than six feet deep; where deeper than six feet, width must exceed half of depth.

Class 2. Bridges; mill wrighting; trestles; steeples, towers or grain elevators not metal framed; tanks; water towers, windmills not metal framed.

Includes assembling of parts and erection; excludes fabrication, manufacture. See Class 27.

Class 3. Sub-aqueous works; canal other than irrigation or docks with or without blasting; pile driving; jetties; breakwaters; marine railways.

Includes dock excavations, 6½ per cent. Ditches and canals, other than irrigation without blasting, rate 6½ per cent. where deeper than six feet and in width less than half of depth.

Class 4. House moving; house wrecking; safe moving.

Excludes ordinary operations of drayage and transfer companies.

Includes moving boilers, heavy machinery, etc., 5 per cent.

Class 5. Iron or steel frame structures or parts of structures; fire escapes; erecting fireproof doors or shutters; blast furnaces; concrete chimneys; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; marble, stone or brick work; roof work; slate work; plumbing work; metal smokestacks or chimneys; advertising signs; ornamental metal work in buildings; carpenter work not otherwise specified; marble, stone or tile setting; mantel setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or foundations; glass setting; building hot houses; lathing; paper hanging; plastering; wooden stair building.

Includes building metal, concrete or brick chimneys, 5 per cent.; construction of concrete buildings and tearing forms from walls, 5 per cent.; outside plumbing, rate 5 per cent., includes "roughing in," and side sewer work, except where underground; inside plumbing, 2 per cent., includes installation of bath tubs, etc.

Excludes iron or steel bridge construction (Class 2), 6½ per cent.

Class 6. Electric light and power plants or systems, telegraph or telephone systems; cable or electric railways with or without rock work or blasting; waterworks or systems; steam heating plants; gas works or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems.

Note by board.—Includes placing wire in conduit, at 3 per cent.; blasting, 5 per cent.; clearing land with blasting, 5 per

cent.; installing furnaces in residences, etc., 2 per cent.; installation of machinery includes foundations for same.

Class 7. Steam railroads; logging railroads.

Note by board.—Includes operation of logging and other steam railroads, 5 per cent.

Class 8. Road-making; street or other grading; concrete laying in street paving; asphalt laying.

Note by board.—Includes road-making with blasting, 5 per cent.; concrete sidewalk laying, 3 per cent.; plank road, street or sidewalk construction or repair, 2 per cent.; new road grading including clearing (without blasting), 2 per cent.; brick or block paving and repair, 2 per cent.

Excludes maintenance of dirt roads without scrapers or machines.

Class 9. Ship or boat building with scaffolds; ship wrighting; ship or boat rigging; floating docks.

Note by board.—Includes construction of drydocks without excavation, 5 per cent.

Operation (Including Repair Work) Of

Class 10. Logging; saw mills; shingle mills; lath mills; masts and spars with or without machinery.

Note by board.—Includes pilers, manual laborers and planers on sawmill premises, and teamsters; stump-pulling with donkey engines, 2½ per cent.; booming logs or driving ties, 2½ per cent.

Excludes retail lumber yards operating without machinery.

"Class 11" omitted by the legislature.

Class 12. Dredges; dry or floating docks.

Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.

Note by board.—Excludes elevators and individual steam heating plants in office buildings, hotels, apartment houses, residences, retail and wholesale stores. (Opinion Attorney General, Sept. 8, 1911.)

Class 14. Street railways.

Note by board.—Includes interurban electric railroads, with third rail, 5 per cent.; without third rail, 4 per cent.

Class 15. Telegraph systems; telephone systems.

Note by board.—Includes line and repair work.
Excludes telephone and telegraph operators.

Class 16. Coal mines.

Note by board.—Excludes office force only.

Class 17. Quarries; stone crushing; mines other than coal.

Note by board.—Excludes teamsters hauling gravel not subjected to cave-in hazard or in contact with machinery.

Class 18. Blast furnaces; smelters; rolling mills.

Class 19. Gas works.

Class 20. Steamboats; tugs; ferries.

Note by board.—Admiralty Jurisdiction. See Sec. 18, note.

Class 21. Grain elevators.

Note by board.—Includes flouring mills, 2 per cent.; grain warehouses, chop and feed mills, 2 per cent.
Excludes threshing machine and hay baling outfits; merchandise warehouses without machinery.

Class 22. Laundries.

Note by board.—Excludes office force and drivers only.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

Factories (Using Power-Driven Machinery).

Class 26. Stamping tin or metal.

Class 27. Bridge work; making steam shovels or dredges; tanks; water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage; staves; veneer; box; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; wood ware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.

Note by board.—Includes planers, if independently operated, 2½ per cent.

Excludes teamsters in fuel yards not working around machines.

Class 30. Asphalt.

Class 31. Cement; stone with or without machinery; building material not otherwise specified.

Note by board.—Includes operation of gravel bunkers and gravel haulers, lime burning, cutting paving blocks, rate 2½ per cent.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

Note by board.—Includes manufacturing dogfish oil, 2½ per cent.; contract work with third parties for pack at flat rate per case, Oriental or white labor, factory owner ruled primarily responsible.

Class 34. Iron, steel, copper, zinc, brass or lead articles or wares; hardware; boiler works; foundries; machine shops not otherwise specified.

Note by board.—Includes beveling glass, rate 2½ per cent.

Class 35. Tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware.

Note by board.—Includes manufacture glass jars, insulators, etc.

Class 36. Peat fuel; brickettes.

Class 37. Breweries; bottling works.

Note by board.—Includes brewery teamsters and helpers, manufacture of ammonia and alcohol, 2 per cent.

Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

Note by board.—Includes broom-making, 1½ per cent.

Class 39. Working in food stuffs, including oils, fruits, vegetables.

Note by board.—Includes candy and cracker factories, excluding only drivers and office force.

Class 40. Condensed milk; creameries.

Class 41. Printing; electrotyping; photo-engraving; engraving; lithographing; making jewelry.

Note by board.—Includes linotypers, compositors, proof readers and foremen in room with machinery or shafting; errand boys.

Excludes bookkeepers and office force, hand engravers not in room with machinery.

Class 42. Stevedoring; longshoring; wharf operation.

Class 43. Stock yards; packing houses; making soap, tallow, lard, grease; tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

Note by board.—Excludes refrigerators of retail meat markets, etc.

Includes ice wagon drivers and helpers.

Class 45. Theater stage employés.

Note by board.—Excludes moving picture operators.

Class 46. Fire works manufacturing; powder works.

Class 47. Creosoting works; pile treating works.

Note by board.—Class 48 created August 14, 1911. Includes all funds derived from "elective non-hazardous" employments.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the payroll of each occupation if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employés and the relative hazards. If an employer besides employing workmen in extra hazardous employment shall also employ workmen in employments not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the payroll the entire compensation received by

every workman employed in extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

Note by board.—The hazard of the business or enterprise determines the application of the act rather than the degree of hazard which the individual workman is subjected to. Hazardous departments are the unit of contribution, even though embracing employés rarely in danger of injury. (Opinion Attorney-General, Sept. 8, 1911.)

Ruled outside the scope of the act: Operation and maintenance of elevators and individual steam heating plants in office buildings, hotels, apartment houses, residences, retail stores, etc. Farm hands grubbing stumps even with blasting powder as an incident to the business of farming, not within the act.

The premium of any establishment given an average rate is credited pro rata to the respective classes represented by the department payrolls.

Sec. 5. Schedule of Awards.—Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

Note by board.—Compensation is payable whenever four facts appear, namely:

(1) The business of the employer was within the scope of this act;

(2) The employé was injured;

(3) Such injury occurred out of and incidental to his employment;

(4) Such injury was not caused by wilful misconduct. It takes no difference whose fault it was or who was to blame. It is sufficient that the industry caused the injury.

The finding of the department of the non-existence of any one of the facts above enumerated would result in the denial of an

award, and in such case an appeal is allowed, as provided in section 20.

Compensation Schedule.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed $75.00 in any case, and,

(1) If the workman leaves a widow or invalid widower, a monthly payment of $20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive $5.00 per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment uner this paragraph (1) of subdivision (a) shall not exceed $35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz., the sum of $240.00, but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of $10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed $35.00, and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent. of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed $20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence

of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive $20.00 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

Note by board.—The rule existing at the time of the passage of this act was that parents of a minor workman were not entitled to damages for his death, even though actually dependent, recovery being limited to the loss of his services during minority. The above provision is the exclusive compensation to be allowed for the death of an unmarried minor workman. (Opinion Attorney General, Jan. 9, 1912.)

The reserve to be set apart under this provision is the present value of the series of monthly payments to be made. *Ibid.*

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent., but the total to all children shall not exceed the sum of thirty-five dollars per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of $20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of $25.00. If the husband is not an invalid, the monthly amount of $25.00 shall be reduced to $15.00.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

(c) If the injured workman die during the period of total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply so long as the total disability shall continue, increased 50 per cent. for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent. of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning

power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

Note by board.—Maximum Monthly Awards Under Sec. 5, Paragraph (d).

Injured Worker	No Child	1 Child	2 Children	3 or more Children
Having able-bodied husband	$22 50	$30 00	$37 50	$45 00
Unmarried	30 00	-----	-----	-----
Having wife or invalid husband	37 50	45 00	52 50	52 50
Widow or widower	30 00	37 50	45 00	52 50

To establish a valid claim under this section, the injured workman need not be so helpless as to require the assistance of a nurse, but there must be professional certification of his being entirely incapable of doing any gainful work, for a period of time resulting in a loss of not less than 5 per cent. of his monthly wage.

Awards under this paragraph for a temporary period, paid monthly or otherwise, not to be deducted from awards for dismemberment or "permanent partial disability" provided in subdivision (f). (Opinion Attorney-General, Dec. 12, 1911.)

The award of 50 per cent. increase over the rates scheduled in subdivision (b) may be paid monthly or at the termination of the disability. Ibid.

The Opinion of Attorney-General: A stevedore who was totally temporarily disabled for a period of seventeen days and was divorced three years ago but had evidently paid $200 alimony during that time. Held that the workman was unmarried at the time of his injury, and consequently that his compensation can not be increased by reason of a legal obligation to contribute to the support of his former wife.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and

he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The state treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The state treasurer shall keep accurate account of all such segregations of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

Note by board.—"The industries of today shall provide for the accidents of today." The reserve to guarantee the continuance of the pensions provided, "set apart for a beneficiary over thirty years of age should be the proportionate part of $4,000, determined by the relation of the expectancy of the life of the beneficiary to the expectancy of one thirty years of age." (Opinion Attorney-General, Jan. 9, 1912.)

To the reserve of a widow is added a reserve for children under 16, but not to exceed $4,000 set apart "for the case." Ibid.

Expectancy of life: Age 30, 35.33 years; 40, 28.18 years; 50, 20.91 years; 60, 14.10 years; 70, 8.48 years.

See Insurance Code, Sec. 92, Chap. 49, Laws 1911.

Payment of warrants by employer, see Sec. 26.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in sur-

gery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of $1,500. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

Note by board.—Award hereunder dependent upon surgical discharge and proofs when the extent of the injury is determinate. See Subd. (d). A lump sum will not be paid where total disability is probable, but monthly allowances under (d).

Awards made under this section are according to a surgical scale of relative impairment of earning capacity. Previous wages or specialized value of lost members can not be considered. While the workman may not get full "compensation," he will always get some compensation, without expense to him and at a time when he most needs it.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensations shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own mo-

tion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

Note by board.—Payments provided in subdivisions (b) and (d) modified when the above family condition exists.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed $4,000.00) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth $4,000.00, or, with the consent of the beneficiary, for a smaller sum.

Note by board.—See Sec. 7, note.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

Sec. 6. Intentional Injuries—Status of Minors.—If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any

excess of damage over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

Note by board.—Where lump sums awarded amount to a sufficient fund to reasonably justify investment, a guardian to be appointed.

Sec. 7. Conversion Into Lump Sum Payment.—In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed $4,000.00), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth the sum of $4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary.

Note by board.—The power here given to the department will, as a matter of policy, be seldom exercised, as in practically all cases it is better for the beneficiaries to receive the award to which they are entitled in installments at stated intervals, rather than in a lump sum. The reasons for this are obvious.

Sec. 8. Defaulting Employers.—If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the state may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Note by board—The defaulting employer can not avail himself of the "common law" defenses, which have been so effective in defeating personal injury claims heretofore, where the fact of the injury to his employé is not contested.

These defenses now abolished, commonly referred to as "contributory negligence," "assumption of risk," and "fellow servant rule," are:

1. That the employé was not, when injured, in the exercise of due care, or was guilty of contributory negligence;

2. That the injury received by the employé was one of the ordinary risks incident to the contract of employment;

3. That the injury was the result of the negligence of a fellow servant.

It will thus be seen that by the common-law rule the employé assumes all of the ordinary risks incident to his employment, and that his employer is only liable when he is guilty of negligence and the employé is wholly free from negligence and his injury was not caused by the negligence of a fellow servant.

Under this section employers who have not contributed to the state insurance fund are deprived of the common-law defenses, and it would seem that the only effective defense available in an action for damages for an alleged injury occurring to an employé in the course of his employment would be that no injury in fact had been sustained, or that the injury received was self-inflicted or that the employer was himself free from fault. The amount of the recovery should be determined by the "comparative negligence" of all parties.

The injured employé once having exercised his option, the decision is final and may not be withdrawn.

Sec. 9. Employer's Responsibility for Safeguard.—If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

(a) In case the consequent payment to the work-

man out of the accident fund be a lump sum, a sum equal to 50 per cent. of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent. of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

Note by board—A boy under 14 years of age, or a girl under 16 years, may not be employed in dangerous trades without written permit from superior court. (Sec. 2447, Rem. and Bal. Code.) Children under 15 may not be so employed while school is in session. (Sec. 4715, Rem. and Bal. Code.)

See Sec. 30 herein. Sec. 2446, Rem. and Bal. Code ruled not applicable to factories.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workmen, the schedule of compensation provided in section 5 shall be reduced 10 per cent. for the individual case of such workman.

Sec. 10. Exemption of Awards.—No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

Note by board—This section is necessary in order to protect the

injured employé and his dependents. If the claim were made assignable he could sell it for a small sum, and thus deprive his dependents of benefits to which they are entitled. The compensation also is made exempt from his debts on the same principle that wages now are made exempt. The justice and fairness of this should be conceded by all.

Sec. 11. Non-Waiver of Act by Contract.—No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.

Sec. 12. Filing Claim for Compensation.—(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

Note by board—The physician's report is a duty to the state; no payment is allowed therefor. Charge for professional services rendered a workman is his personal debt, unless the employer contracted to pay the same. See Sec. 24, 4, 7.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim there-

under enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Note by board—All blanks necessary in the judgment of the department for the administration of the law are furnished free of cost to all employers and employés coming within the purview of the act.

Sec. 13. Medical Examination.—Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Note by board—Refusal to submit to examination where a lump sum award is anticipated will be prima facie cause for rejection of claim which may be filed within the year.

Sec. 14. Notice of Accident.—Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

Note by board—"Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in

such statement, report or information shall make any wilfully untrue, misleading or exaggerated statement, or who shall wilfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall be guilty of a misdemeanor." Rem. and Bal. Code, Sec. 2672; Sec. 420, Chap. 249, Laws 1909.

Sec. 15. Inspection of Employer's Books.—The books, records and payrolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent, or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Note by board.—Misdemeanor—Penalty, imprisonment in county jail not to exceed 90 days, or by a fine not to exceed $250.00. Rem. and Bal. Code, Sec. 2266; Sec. 14, Chap. 249, Laws 1909.

Sec. 16. Penalty for Misrepresentation as to Payroll.—Any employer who shall misrepresent to the department the amount of payroll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the State under this section shall be enforced in a civil action in the name of the State. All sums collected under this section shall be paid into the accident fund.

Sec. 17. Public and Contract Work.—Whenever the State, county or any municipal corporation shall en-

gage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the State, county or municipality. If said work is being done by contract, the payroll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the State for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. The provisions of this section shall apply to all extra hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total payroll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by State law, city charter or municipal ordinance, provision is made for municipal employés injured in the course of employment, such employés shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

Note by board—Payments into the Accident Fund to be made out of the treasury of the city, county, school, port or drainage district; abstract of contractors' payrolls, as well as of the direct employés in hazard, to be forwarded to the department monthly. The public corporation is entitled (if it so elect) to recoup from the contractor. Contractors in such work required to file payrolls monthly with the city, etc.

No distinction in rate or assessment can be made between contractors, or others, in public or private work. The same premium and necessity of contribution apply, determined by the payroll of

employés, hazard, accident experience of the class, and sound discretion of the department.

Contractors engaged in work for the federal government: Where the United States acquired land by purchase for its own use, this act is not applicable to such works and occupations as may be carried on within the confines of such land. (Opinion Attorney-General, Sept. 20, 1911.)

An expert rendering service at time rates is an independent contractor only where he fixes the condition of work and hazard.

Sec. 18. Interstate Commerce.—The provisions of this act shall apply to employers and workmen engaged in intrastate, state and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this State may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

Note by board—"The state legislature is without power to prescribe an exclusive remedy," where an injured seaman has the right of relief in admiralty. Act limited in compulsory operation "to vessels operating upon the navigable waters of the state without any navigable outlet to any other state or country." (Opinion Attorney-General, Oct. 28, 1911); Cf. The Genesee Chief, 12 How. 457; West v. Martin, 51 Wash. 85.

Loading or unloading at wharf, see The Mary Garrett, 63 Fed. 1011; Herman v. Port Blakely Mill Co., 69 Fed. 646.

Interstate commerce, see Southern Ry. Co. v. U. S. Sup. Ct., Oct. 30, 1911, 164 Fed. 347; Zikos v. O. R. & N. Co., 179 Fed. 893.

Sec. 19. Elective Adoption of Act.—Any employer

and his employés engaged in works not extra hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

Note by board—Elective non-hazardous industries or occupations segregated into Class 48 at rate of $1.35 per $100.00 of payroll. (Opinion Attorney-General, Sept. 16, 1911.)

Sec. 20. Court Review.—Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivisions (1) of section numbered 5) in so far as such decision rests upon questions of fact, or on the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the Commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named

an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the Commissioners. In all court proceedings under or pursuant to this act the decision of the department shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Note by board—The finding and award of the department appears to be reversible only on the three grounds: (1) That it acted without or in excess of its powers; (2) that the award was procured by fraud; (3) that the findings of fact by the department do not support the award.

Sec. 21. Creation of Department.—The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department.

The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commission shall select one of their members as chairman. The main office of the commission shall be at the State capitol, but branch offices may be established at other places in the State. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

Note by board—See Sec. 15, note.

Sec. 22. Salary of Commissioners.—The salary of each of the Commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the Commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the Commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

Sec. 23. Deputies and Assistants.—The Commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed $5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain an uniform form of payroll.

Sec. 24. Conduct, Management and Supervision of

Department.—The Commission shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.

2. Ascertain and establish the amounts to be paid into and out of the accident fund.

Note by board—It is contemplated that Class Bulletins to emphasize accident prevention in various industries may be issued from time to time; and Safety Regulations promulgated after consideration in trade conventions, violation of which may automatically increase the premium rate of the offending employer.

3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.

Note by board—There is no fund or provision for payment of charges for ambulance, physician, surgeon, hospital, nurse, medicine or surgical appliances. The "first aid" provision was stricken from the proposed act before passage by the legislature. See Appendix II.

5. Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the Governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

8. Make annual reports to the Governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status

and the outstanding obligations of the accident fund, and the statistics aforesaid.

Sec. 25. Medical Witnesses.—Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the progress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

Sec. 26. Disbursement of Funds.—Disbursement out of the funds shall be made only upon warrants drawn by the State Auditor upon vouchers therefor transmitted to him by the department and audited by him. The State Treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The State Treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The State Treasurer shall be liable on his official bond for the safe custody of the moneys

and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for State depositories and to regulate the deposits of State moneys therein," shall be applied to said moneys and the handling thereof by the State Treasurer.

Opinion of Attorney-General: Where the funds of a particular class have been depleted by payment of pensions and awards, to such an extent that there remains in the fund an insufficient sum from which to make further monthly payments, that it is proper for the commission to approve vouchers for such further monthly payments, obtain warrants therefor from the state auditor, and deliver such warrants to the persons entitled; that it is entirely proper for the Industrial Commission to advise the state treasurer that the funds of the particular class are insufficient to pay the warrant.

Sec. 27. Test of Invalidity of Act.—If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workmen, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Sec. 28. Statute of Limitations Saved.—If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any

adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: Provided, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Sec. 29. Appropriations.—There is hereby appropriated out of the State treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of $1,500,000, or so much thereof as shall be necessary for the purposes of this act.

Note by board—The law requires the state to pay the entire cost of administration of the state insurance fund, leaving the whole amount paid into such fund by the employers to be devoted to the payment of awards for injuries.

The state can well afford to bear this expense, as its courts will be relieved of a large amount of work, and the burden now placed upon taxpayers by the trial of negligence cases will be minimized. The tendency of this act should be to produce good will between

employer and employé, and to lessen the cases of hardship among dependents of injured employés. In taking into consideration the state's many vital interests in the welfare of the workman and his family, the general taxpayer may well afford to bear the expense of administration.

Sec. 30. Safeguard Regulations Preserved.—Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9 and 10 of the act approved March 6, 1905, entitled "An act providing for the protection and health of employés in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled 'An act providing for the protection of employés in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

Note by board—The formation of corporate or voluntary associations, by members of the compulsory classes of employers, to study methods and appliances for accident prevention and to reduce the insurance cost under this act is urged and the co-operation of the Commission tendered.

Sec. 31. Distribution of Funds in Case of Repeal.—If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Sec. 32. Saving Clause.—This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

§ 125. Proposed amendment.—The Washington Industrial Insurance Commission reports that the experience of the first year's operation of the act shows that there is a state-wide and insistent demand that the Washington Act be so amended by the next legislature as to provide a First Aid Fund which shall care for all injuries for a period of, say three weeks. The reason is that experience shows that the act in its present form does not give the injured workmen in the mass more than about 33 per cent. of the loss sustained. To meet this situation the commission which made the original draft of the present law recommended the following provision (which the last legislature refused to enact):

The provision for a First Aid Fund proposed by the investigating commission in its draft of the workmen's compensation act, but which provision the legislature refused to enact into law, was as follows:

"Sec. 10. Creation of First Aid Fund.—A fund is hereby created in the State treasury to be known as the First Aid Fund. Into it shall be paid by each employer, on or before the fifteenth day of November, 1911, and each month thereafter, the sum of four cents for each day's work or fraction thereof done by each workman for him during the preceding calendar month or part thereof. Two cents of such four cents shall be deducted by the employer from the pay of the workman.

Sec. 11. Disbursements of First Aid Fund.—Upon the occurrence of any injury to a workman, he shall receive from the First Aid Fund proper and necessary medical, surgical and hospital services and compensation for the period of temporary or other disability in the sum of five dollars per week, for not to exceed three weeks, payable at the end of each week. It shall be the

duty of the employer to see to it that immediate medical and surgical services are rendered, and transportation to hospital provided, and all charges therefor shall be audited and paid and be payable only by the department out of the First Aid Fund."

§ 126. Constitutionality of the act.—We give in full in the succeeding section the opinion of the Supreme Court of Washington, in State v. Clausen, 117 Pac. 1101, which sustains the constitutionality of the Washington Act against the objection that it authorized the taking of property without due process of law, that it operated as a denial of the equal protection of the laws, that it amounted to an inequality of taxation and that it denied the right of trial by jury.

The court sustained the constitutionality of the act as against the first three objections, but did not pass upon the fourth.

This opinion is of great value, both on account of the court's discussion of many important historical, sociological and economic questions in connection with the legal principles involved in the enactment of a compulsory workmen's insurance law, and because up to the time of the rendering of this decision, in September, 1911, no Supreme Court of any of the States had sustained the right of a State legislature to enact a law that would create a fund by taxing employers of specified classes and making it obligatory upon the workmen employed by the said employers to accept specified compensations for personal injuries received in the due course of their employment. For the right of an injured workman to sue his employer is almost wholly eliminated, excepting the very restricted cases retained in sections 6 and 8 of the act.

§ 127. Opinion of the court.—The case of State v. Clausen[1] was before the Supreme Court on the refu-

[1] 65 Wash. 156, 117 Pac. 1101.

sal of the State auditor to issue a warrant on the State treasurer for the payment of furniture purchased by the industrial insurance department for its office. The contention of the auditor was that the law creating the department was not constitutional, and that he had therefore no power to expend moneys of the State in its behalf. This contention the Supreme Court rejected, and after a discussion of the various points of objection raised to the law sustained it in all points. Owing to the importance of the decision, it is given in full, together with the concurring opinion of Judge Chadwick, expressing his views as to the finality of the decision under the circumstances.

Having made a statement of the conditions under which the case was before the court, and after presenting a summary of the law, Judge Fullerton, speaking for the court, said:

The foregoing summary makes clear the theory and purpose of the act. It is founded on the basic principle that certain defined industries, called in the act extra hazardous, should be made to bear the financial losses sustained by the workmen engaged therein through personal injuries, and its purpose is to furnish a remedy that will reach every injury sustained by a workman engaged in any of such industries, and make a sure and certain award therefor, bearing a just proportion to the loss sustained, regardless of the manner in which the injury was received. With the economic questions thus suggested, the auditor's learned counsel object only to the wisdom of the scheme formulated. They concede that the evil is one calling for a remedy, and direct their arguments solely against this particular act. In our discussion we shall confine ourselves to the questions thus suggested, noticing the ecenomic questions only incidentally.

The act is challenged as unconstitutional on four distinct grounds: (1) That it violates section 3, of

article 1, of the State constitution, and the fourteenth amendment to the Constitution of the United States, which provide that no person shall be deprived of life, liberty, or property without due process of law; (2) that it violates section 12, of article 1, of the State constitution, which provides that no law shall be passed granting to any citizen, class of citizens, or corporations, other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations; and the fourteenth amendment to the Constitution of the United States, which provides for the equal protection of the laws; (3) that it violates sections 1 and 2, of article 7, of the State constitution, which provide that property shall be taxed according to its value in money and that all taxation shall be equal and uniform; and (4) that it violates section 21, of article 1, of the State constitution which provides that the right of trial by jury shall remain inviolate. But while we shall discuss the questions suggested under the several divisions as here set out, it is obvious that no very logical segregation of the argument can be thus made, as many of the reasons advanced for or against the act under one particular division are equally applicable to one or more of the others. Any different arrangement, however, seems to be at the sacrifice of clearness, and we pass therefore directly to the first objection stated.

It is with regret that we are unable to set forth at length counsel's argument on this branch of the case, as any abbreviation of it is at the expense of its cogency and force. To do so, however, would unduly lengthen this opinion. The argument is based on two fundamental ideas: The one, that the act creates a liability without fault; and the other, that it takes the property of one employer to pay the obligations of another. It must be conceded that these contentions have a basis in fact, and that they, on first impression, constitute a persuasive argument against the validity of the act.

Since there is exacted from every employer of labor engaged in one or more of the industries termed hazardous a certain fixed sum based upon his payroll, which is to be used to compensate employés working in such hazardous employments who receive personal injuries, regardless of the question whether the injury was because of the fault of the employer or of the negligence of the employé, it can be said that some part of the sum so collected will be paid out on injuries in which the employer is without fault; and, furthermore, since every such employer is liable to make the payments whether or not any of his own workmen are injured, and since an employer is liable under the common law for an injury to his own workmen only, it can also be said that by this act one employer is held liable for the obligations of another.

But these conditions do not furnish an absolute test of the validity of the act. In the statute books of the several States are many statutes held constitutional by the courts where liability is created without fault, and where the property of one person is taken to pay the obligations of another, and this where no compensation is made to the person who is thus made liable or whose property is thus taken, other than perhaps the bestowal upon him of some privilege. The test of the validity of such a law is not found in the inquiry, Does it do the objectionable things? but is found rather in the inquiry, Is there no reasonable ground to believe that the public safety, health or general welfare is promoted thereby? The legislature can not, of course, without violating this clause of the Constitution, declare a particular industry, commonly engaged in by the people, to be unlawful which, under all circumstances, must necessarily be harmless and innocent; but it can regulate and control and prohibit any industry, however innocent it may have been in its inception, whenever it becomes a menace to the employés engaged in it, the people surround-

ing it, or to any considerable number of the people at large, no matter from whatsoever cause the menace may arise. This it does under the police power: "the power inherent in every sovereignty * * * the power to govern men and things."

It is unnecessary to discuss the origin, nature or extent of this power. It is sufficient to say that, by means of it, the legislature exercises a supervision over matters affecting the common weal and enforces the observance by each individual member of society of duties which he owes to others and the community at large. The possession and enjoyment of all rights are subject to this power. Under it the State may "prescribe regulations promoting the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its welfare and prosperity." In fine, when reduced to its ultimate and final analysis, the police power is the power to govern. It is not meant here to be asserted that this power is above the Constitution, or that everything done in the name of the police power is lawfully done. It is meant only to be asserted that a law which interferes with personal and property rights is valid only when it tends reasonably to correct some existing evil or promote some interest of the State, and is not in violation of any direct and positive mandate of the Constitution. The clause of the Constitution now under consideration was intended to prevent the arbitrary exercise of power, or undue, unjust, and capricious interference with personal rights; not to prevent those reasonable regulations that all must submit to as a condition of remaining a member of society. In other words, the test of a police regulation, when measured by this clause of the Constitution, is reasonableness, as contradistinguished from arbitrary or capricious action.

The authorities, as we view them, abundantly support the foregoing principles. Of statutes upheld by

the court which can be said to create liability without fault and take the property of one person to pay the obligations of another, the most conspicuous examples are, perhaps, sections 4585 and 4803 of the Revised Statutes of the United States, which provide:

"Sec. 4585. There shall be assessed and collected by the collector of customs at the ports of the United States, from the master or owner of every vessel of the United States arriving from a foreign port, or of every registered vessel employed in the coasting trade, and before such vessel shall be admitted to entry, the sum of forty cents per month for each and every seaman who shall have been employed on such vessel since she was last entered at any port of the United States; such sum such master or owner may collect and retain from the wages of such seamen."

"Sec. 4803. The several collectors of the customs shall respectively deposit, without abatement or reduction, the sums collected by them under the provisions of law imposing a tax upon seamen for hospital purposes, with the nearest depositary of public moneys, and shall make returns of the same, with proper vouchers, monthly, to the Secretary of the Treasury, upon forms to be furnished by him. All such moneys shall be placed to the credit of 'the fund for the relief of sick and disabled seamen;' of which fund separate accounts shall be kept in the Treasury. Such fund is appropriated for the expenses of the Marine-Hospital Service, and shall be employed, under the direction of the Secretary of the Treasury, for the care and relief of sick and disabled seamen employed in registered, enrolled, and licensed vessels of the United States."

This statute clearly does everything that is charged against the statute at bar. It creates liability without fault, since it obligates the master or owner of every vessel of the United States to pay into a given fund, controlled by the Government, a fixed sum for the

benefit of sick and disabled seamen, regardless of the fact whether or not the vessel of the master or owner making the payment has any sick or disabled seamen who take advantage of the fund; and it takes the property of one to pay the obligations of another, since the fund is disbursed in the cure of sick and disabled American seamen generally, regardless of the fact whether or not the expense of their cure exceeds the sum paid in by the master or owner of the vessel from which they came. Whatever may be said as to the foundation of the liability of the master or the owner of a vessel, or the vessel itself, to answer for the expenses of the cure of sick and disabled seamen while in service on the ship, the foundation of this liability is purely statutory; and, if the objection that is made to the present statute were sufficient to condemn it, the statute is in violation of the fifth amendment to the Constitution of the United States. The statute had its inception in the act of Congress of July 16, 1798 (1 Stats. at Large, 606), and was on the statute books for nearly 100 years, during which time it was continuously enforced. It is true our attention has been called to no case where the statute was directly attacked; but there are numerous cases in which it has been specifically mentioned and given force, and it would seem that, if it were thought inimical to the Constitution, it would not have escaped the attention of the astute counsel whose client's interests were adversely affected by it. (Buckley v. Brown, Fed. Case, No. 2092; Reed v. Canfield, Fed. Case, No. 11641; Peterson v. The Chandos, 4 Fed. 645; Holt v. Cummings, 102 Pa. St. 212, 48 Am. Rep. 199. See, also, 3 Opinions of Attorneys General (U. S.) 683; 13 Opinions of Attorneys General (U. S.) 330.)

Statutes making railroad corporations absolutely liable, without regard to negligence, for injuries to property caused by fires escaping from their locomotive engines, are clearly statutes creating liability without fault,

yet these statutes have been upheld by all the courts of the States in which they have been enacted, as well as by the Supreme Court of the United States. (Chapman v. Atlantic & St. Lawrence R. Co., 37 Me. 92; Sherman v. Maine Cent. R. Co., 86 Me. 422, 30 Atl. 69; Hooksett v. Concord R., 38 N. H. 242; Smith v. Boston & Maine R., 63 N. H. 25; Lyman v. Boston & Worcester R. Corp., 4 Cush. 288; Pierce v. Worcester & Nashua R. Co., 105 Mass. 199; Rodemacher v. Milwaukee & St. P. R. Co., 41 Iowa 297, 20 Am. Rep. 592; Mathews v. St. Louis & San Francisco R. Co., 121 Mo. 298, 24 S. W. 591, 25 L. R. A. 161; Emerson v. Gardiner, 8 Kans. 452; Jensen v. South Dakota Cent. R. Co., 25 S. Dak. 506, 127 N. W. 650; St. Louis & San Francisco R. Co. v. Mathews, 165 U. S. 1; Atchison, T. & S. F. R. Co. v. Matthews, 174 U. S. 96.)

Other statutes are those providing that any landlord who knowingly leases his premises for saloon purposes shall be liable for losses resulting from intoxication caused by the sale of liquor by his lessee. Such a statute was formerly in force in this State, and was given effect by this court. (Delfel v. Hanson, 2 Wash. 194, 26 Pac. 220; Burkman v. Jamieson, 25 Wash. 606, 66 Pac. 48.) And in Bertholf v. O'Reilly, 74 N. Y. 509, 30 Am. Rep. 323, the constitutionality of a like statute was maintained in an opinion by Judge Andrews, renowned for his ability and learning. In the course of his opinion the learned judge noted the fact that the liability of the landlord could not be sustained on the theory that such liability was a condition of a privilege granted by the statute, but rested the decision on the principle that the State, under its police power, could impose upon the landlord liability for the acts of his tenants. In the course of the opinion this language was used:

"And the act of 1873 is not invalid because it creates a right of action and imposes a liability not known to the common law. There is not such limit to legislative

power. The legislature may alter or repeal the common law. It may create new offenses, enlarge the scope of civil remedies, and fasten responsibility for injuries upon persons against whom the common law gives no remedy. We do not mean that the legislature may impose upon one man liability for an injury suffered by another, with which he had no connection. But it may change the rule of the common law, which looks only to the proximate cause of the mischief, in attaching legal responsibility, and allow a recovery to be had against those whose acts contributed, although remotely, to produce it. * * *

"The liability imposed upon the landlord for the acts of the tenant is not a new principle in legislation. His liability only arises when he has consented that the premises may be used as a place for the sale of liquors. He selects the tenant, and he may, without violating any constitutional provision, be made responsible for the tenant's acts, connected with the use of the leased property."

Statutes imposing a liability upon fire insurance agents, based upon the amount of the insurance effected by them, for the benefit of a fund to care for and cure sick and injured firemen, have been upheld in the States of New York and Illinois. (Fire Department v. Noble, 3 E. D. Smith (N. Y.) 440; Fire Department v. Wright, 3 E. D. Smith (N. Y.) 453; Exempt Fireman's Fund v. Roome, 29 Hun 391, 394; Firemens Benevolent Ass'n v. Lounsbury, 21 Ill. 511, 74 Ann. Dec. 115.) Clearly these are statutes creating liability without fault. A similar statute relating to agents of foreign fire insurance companies was upheld in Wisconsin. (Fire Department v. Helfenstein, 16 Wis. 136.)

The statute of Nebraska makes a railroad company liable in damages for injuries sustained by a passenger regardless of the question of negligence on the part of the company, except where the injury is caused by the

passenger's criminal negligence, or by his violation of some express rule of the company, actually brought to his attention. This statute was upheld against a challenge on the ground that it violated the due process of law clauses of the State and Federal constitutions, by the State court, in Chicago, R. I., etc., R. Co. v. Zernecke, 59 Nebr. 689, 82 N. W. 26, 55 L. R. A. 610, and by the Supreme Court of the United States in Chicago, R. I., etc., R. Co. v. Zernecke, 183 U. S. 582. The Supreme Court of the United States, vindicating the statute against the attack made upon it, used the following language:

"In Omaha & R. V. R. Co. v. Chollette, 33 Nebr. 143, the words of the statute exempting railroad companies from liability, 'where the injury done 'arose from the criminal negligence of the persons injured,' were defined to mean 'gross negligence,' 'such negligence as would amount to a flagrant and reckless disregard' by the passenger of his own safety, and amount to a 'willful indifference to the injury liable to follow.' This definition was approved in subsequent cases. It was also approved in the case at bar, and the plaintiff in error, it was in effect declared, was precluded from any defense but that of negligence as defined, or that the injury resulted from the violation of some rule of the company by the passenger brought to his actual notice, and the company, as we have said, was not permitted to introduce evidence that the derailment of its train was caused by the felonious act of a third person. The statute, thus interpreted and enforced, it is asserted, impairs the constitutional rights of plaintiff in error. The specific contention is that the company is deprived of its defense, and not only declared guilty of negligence and wrongdoing without a hearing, but, adjudged to suffer without wrongdoing, indeed even for the crimes of others, which the company could not have foreseen or have prevented.

"Thus described, the statute seems objectionable.

Regarded as extending the rule of liability for injury to persons which the common law makes for the loss of or injury to things, the statute seems defensible. And it was upon this ground that the Supreme Court of the State defended and vindicated the statute. The court said:

"'The legislation is justifiable under the police power of the State, so it has been held. It was enacted to make railroad companies insurers of the safe transportation of their passengers as they were of baggage and freight; and no good reason is suggested why a railroad company should be released from liability for injuries received by a passenger while being transported over its line, while the corporation must respond for any damages to his baggage or freight.'

"Our jurisprudence affords examples of legal liability without fault, and the deprivation of property without fault being attributable to its owner. The law of deodands was such an example. The personification of the ship in admiralty law is another. Other examples are afforded in the liability of the husband for the torts of the wife—the liability of a master for the acts of his servants.

"In Missouri Railway Co. v. Mackey, 127 U. S. 205, a statute of Kansas abrogating the common law rule exempting a master from liability to a servant for the negligence of a fellow-servant, was sustained against the contention that such statute violated the fourteenth amendment of the Constitution of the United States. And in Minneapolis, etc., Railway Co. v. Herrick, 127 U. S. 210, a statute of Iowa which extended liability for the 'willful wrongs, whether of commission or omission,' of the 'agents, engineers or other employés' of railroad companies, was vindicated against the double attack of being an unjust discrimination against railroad corporations and the deprivation of property without due process of law."

The latest illustration of such a statute is found in the

Oklahoma depositors guaranty law, which authorizes the assessment and collection of a certain per centum on the daily average deposit of each and every bank organized under the laws of the State as a fund to pay the losses caused depositors by failing and insolvent banks. This act was challenged in the State court on the ground that it violated the fourteenth amendment to the Constitution of the United States, and the due process of law clause of the State constitution; but was upheld by the State court, and on writ of error to the Supreme Court of the United States, the judgment of the State court was affirmed. (Noble State Bank v. Haskell, 22 Okl. 48, 97 Pac. 590; Noble State Bank v. Haskell, 219 U. S. 104.) Answering the objection that the act takes private property for a private use, and creates a liability without fault, the Supreme Court of the United States said:

"The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. And while we should assume that the plaintiff would retain a reversionary interest in its contribution to the fund so as to be entitled to a return of what remained of it if the purpose were given up (see Receiver of Danby Bank v. State Treasurer, 39 Vt. 92, 98), still there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. (Clark v. Nash, 198 U. S. 361; Strickley v. Highland Boy Mining Co., 200 U. S. 527, 361; Offield v. New York, New Haven & Hartford R. R. Co., 203 U. S. 372; Bacon v. Walker, 204 U. S. 311, 315.) And in the next, it would seem that

there may be other cases besides the every day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. (See Ohio Oil Co. v. Indiana, 177 U. S. 190.) At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said."

Illustrations of the nature and all-pervading extent of the police power are shown somewhat in the cases already cited. Other illustrations abound almost without number in the decisions of the State and Federal courts. It will be sufficient for our purposes, however, to call attention to a few of those which most clearly, as we believe, illustrate the doctrine. In Lawton v. Steele, 152 U. S. 133, the court used this language:

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passersby; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of

gambling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."

Again, in Holden v. Hardy, 169 U. S. 366, it was said:

"An examination of both these classes of cases under the fourteenth amendment will demonstrate that, in passing upon the validity of State legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the States methods of procedure, which at the time the constitution was adopted were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. Even before the adoption of the constitution, much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. The number of capital crimes, in this country at least, had been largely decreased. Trial by ordeal and by battle had never existed here, and had fallen into disuse in England. The earlier practice of the common law, which denied the benefit of witnesses to a person accused of felony, had been abolished by statute, though so far as it deprived him of the assistance of counsel and compulsory process for the attendance of his witnesses, it had not been changed in England. But to the credit of

her American colonies, let it be said that so oppressive a doctrine had never obtained a foothold there.

"The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the States homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the States grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority. This case does not call for an expression of opinion as to wisdom of these changes, or their validity under the fourteenth amendment, although the substitution of prosecution by information in lieu of indictment was recognized as valid in Hurtado v. California, 110 U. S. 516. They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent in-

flexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land."

So, in Noble State Bank v. Haskell, supra, Mr. Justice Holmes said:

"It may be said in a general way that the police power extends to all the great public needs. (Canfield v. United States, 167 U. S. 518.) It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If then the legislature of the State thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. Even the primary object of the required assessment is not a private benefit as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. The priority of claim given to depositors is incidental to the same object and is justified in the same way. The power to restrict liberty by fixing a minimum of capital required of those who would engage in banking is not denied. The power to restrict investments to securities regarded as relatively safe seems equally plain. It has been held, we do not doubt rightly, that

inspections may be required and the cost thrown on the bank. (See Charlotte, Columbia & Augusta R. R. Co. v. Gibbes, 142 U. S. 386.) The power to compel, beforehand, co-operation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end. (Gundling v. Chicago, 177 U. S. 183, 188.) So far is that from being the case that the device is a familiar one. It was adopted by some States the better part of a century ago, and seems never to have been questioned until now. (Receiver of Danby Bank v. State Treasurer, 39 Vt. 92; People v. Walker, 17 N. Y. 502.) Recent cases going not less far are Lemieux v. Young, 211 U. S. 489, 496; Kidd, Dater and Price Co. v. Musselman Grocer Co., 217 U. S. 461.

"It is asked whether the State could require all corporations or all grocers to help to guarantee each other's solvency, and where we are going to draw the line. But the last is a futile question, and we will answer the others when they arise. With regard to the police power, as elsewhere in the law, lines are pricked out by the gradual approach and contact of decisions on the opposing sides. (Hudson County Water Co. v. McCarter, 209 U. S. 349, 355.) It will serve as a datum on this side, that in our opinion the statute before us is well within the State's constitutional power, while the use of the public credit on a large scale to help individuals in business has been held to be beyond the line. (Loan Association v. Topeka, 20 Wall. 655; Lowell v. Boston, 111 Mass. 454.)"

It is argued, however, that the statutes above referred to can be supported on principles not applicable to the statute before us. First, it is said that the statutes creating absolute liability on railroad companies for losses caused by fires from their locomotive engines are in themselves but a return to the common law as it

originally existed. But this does not meet the objection. At the time the common law became a rule of action for the American States, the doctrine that negligence or fault of some kind was a necessary element of liability was as firmly embedded in it as was any other of its tenets, and to create liability regardless of negligence is now as fundamental a change in the common law as it would be had the rule always remained as it now is. Again, it is said that the right to use the agencies of fire and steam in the movement of trains is derived from legislation by the State, and the State can, for that reason, prescribe such limitations upon, and annex such conditions to, its use as it may deem fit and necessary to protect from injury those who come in contact with it. But the premise here assumed is not strictly accurate. The use of fire and steam to propel trains is not in itself unlawful. On the contrary, it is as much a natural right as is the right to propel them by any other means or to engage in any other lawful enterprise. Hence, the power to regulate and interfere with the right must come from some source other than the inherent unlawfulness of the act itself. It is not meant to be said, of course, that the State, when it grants a charter to a railroad company empowering it to construct and operate a railroad within its boundaries, may not annex to the charter such conditions as it pleases. But that is not the question here. The question is, whence comes the power to impose these additional burdens upon a railroad corporation by legislative fiat after it has received its charter and has constructed and is operating its road thereunder? Unless the constitution or the act granting the charter itself expressly reserves such right, the legislature can not materially change the charters of railroad companies after it has once granted them. The power to annex additional conditions thereto must therefore be found in some other power than the one here alluded to. Then, again, it is said with refer-

ence to these and the bank guaranty statutes, that the corporations named therein are affected with a public interest, and that this fact renders them subject to regulations that they would not otherwise be subject to. But again, we say that the legislature, because of this public interest, may be warranted in imposing such a condition as a precedent right to engage in the business of railroading or banking, but it furnishes no reason for imposing additional conditions after the business has been entered upon with the consent of the State. The property of such institutions is private property, and its ownership is as secure and free from arbitrary exactions as is the property invested in enterprises of a more private nature. Of the statutes making the landlord liable for damages caused by the sale of intoxicating liquors by his tenant, it is said that the traffic is unlawful in itself; that "whisky is an outlaw," and hence the legislature, if it permits its sale at all, may prescribe the terms upon which sales shall be made. But here again the assumption is not in accord with the fact. The sale of liquor was not unlawful at common law. On the contrary it has been said by as high an authority as the Supreme Court of the United States that the State could no more exclude "its importation and sale in original packages without the consent of Congress than it could exclude the sugar of Louisiana, the cotton of South Carolina, the wines of California, the hops of Washington, the tobacco of Maryland and Connecticut, or the products natural or manufactured of any State." (Lyng v. Michigan, 135 U. S. 161.) It refused to classify intoxicating liquors with rags or other goods infected with disease, or with cattle or meat or other provisions which from their condition are unfit for human use or consumption; as it was conceded that the State could prohibit the importation and use of these in any form, with or without the consent of Congress. It seems to us, therefore, that it can not be successfully controverted

that all of these statutes rest upon the same basic principle on which the statute at bar rests; that is to say, they have their foundation in the police power of the State.

Nor is it sufficient to exclude the industries mentioned in the act before us from the operation of these principles to say that they are lawful callings, not subject to absolute prohibition. As we have said in another place, lawful trades and businesses, although private in their nature, are subject to the police power, and may be controlled and regulated under it whenever the welfare of the State requires it. This is well illustrated by the laws of our own State. For example, the statute requiring employers of labor to pay their employés in lawful money; the statute requiring employers of female help in stores or offices to provide each of them with a chair or stool on which to rest when their duties permit; the statute prohibiting the employment of females in any mechanical or mercantile establishment, laundry, hotel or restaurant, for more than 10 hours in any one day; the statute limiting the number of hours an employé will be permitted in any one day to work underground in a coal mine; the statute requiring machinery in factories, mills and workshop, the openings of all hoistways, hatchways, elevators and well holes, to be guarded; the statute appointing a commissioner of labor, and empowering him to inspect mills and factories and charge the cost thereof to the mill or factory inspected, are all statutes regulating lawful trades or businesses not affected with public interests; yet each and all of them have been upheld and enforced in a long line of cases by this court. (State v. Buchanan, 29 Wash. 602, 70 Pac. 52, 92 Am. St. 930, 59 L. R. A. 342; Kirkham v. Wheeler-Osgood Co., 39 Wash. 415, 81 Pac. 869; Shortall v. Puget Sound Bridge & Dredging Co., 45 Wash. 290, 88 Pac. 212; Hall v. West & Slade Mill Co.,

39 Wash. 447, 81 Pac. 915; Whelan v. Washington Lumber Co., 41 Wash. 153, 83 Pac. 98, 111 Am. St. 1006.)

The Supreme Court of the United States in Sentell v. New Orleans, etc., R. Co., 166 U. S. 698, speaking of the power of the State to interfere with private property, used this language:

"That a State, in a bona fide exercise of its police power, may interfere with private property, and even order its destruction, is as well settled as any legislative power can be, which has for its objects the welfare and comfort of the citizen. For instance, meats, fruits and vegetables do not cease to become private property by their decay; but it is clearly within the power of the State to order their destruction in times of epidemic, or whenever they are so exposed as to be deleterious to the public health. There is also property in rags and clothing; but that does not stand in the way of their destruction in case they become infected and dangerous to the public health. No property is more sacred than one's home, and yet a house may be pulled down or blown up by the public authorities, if necessary to avert or stay a general conflagration, and that, too, without recourse against such authorities for the trespass."

The power to regulate, therefore, applies alike to all employments. The test of the power is found in the effect the pursuit of the calling has upon the public weal, rather than in the inherent nature of the calling itself.

In Allgeyer v. Louisiana, 165 U. S. 578, the court, referring to the fourteenth amendment to the Constitution of the United States, said:

"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to

pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

It is thought the act at bar interferes with certain of the personal rights here defined, particularly with the right of contract, and is for that reason violative of this provision of the Constitution. But it is recognized in the case cited, and in many others, that these rights are not absolute. On the contrary, it has been many times said that there is no absolute right to do as one wills, pursue any calling one desires, or contract as one chooses; that the term liberty means absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. The principle was thus stated in Frisbie v. United States, 157 U. S. 160:

"A second objection, insisted upon now as it was by demurrer to the indictment, is that the act under which the indictment was found is unconstitutional, because interfering with the price of labor and the freedom of contract. This objection also is untenable. While it may be conceded that, generally speaking, among the inalienable rights of the citizens is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking,

every citizen has a right freely to contract for the price of his labor, services, or property."

Again, in the case of Holden v. Hardy, 169 U. S. 366, the court, holding constitutional the statute of the State of Utah fixing the number of hours a workingman should be permitted to work continuously in underground mines, used this language:

"This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of employés as to demand special precautions for their well-being and protection, or the safety of adjacent property. While this court has held, notably in the cases Davidson v. New Orleans, 96 U. S. 97, and Yick Wo v. Hopkins, 118 U. S. 356, that the police power can not be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety or morals, or the abatement of public nuisances, and a large discretion 'is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.'"

So, in State v. Buchanan, supra, this court, holding constitutional the act limiting the number of hours women could be required to work in one day in mechanical and mercantile establishments, said:

"Law is, or ought to be, a progressive science. While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government. In the early history of the law, when employments were

few and simple, the relative conditions of the citizen and the state were different, and many employments and uses which were then considered inalienable rights have since, from the very necessity of changed conditions, been subjected to legislative control, restriction, and restraint. This all flows from the old announcement made by Blackstone that when man enters into society, as a compensation for the protection which society gives to him, he must yield up some of his natural rights, and, as the responsibilities of the government increase, and a greater degree of protection is afforded to the citizen, the recompense is the yielding of more individual rights. Transportation companies are now controlled and restricted, where a few years ago they claimed the right to transact their business exactly as it suited their private interests. The practice of medicine is restricted and controlled; laws against quackery and empiricism are enforced without question. The sale of liquor, which formerly was a legitimate business, and which the citizen had a right to enter into, as he did any other business, without any restrictions, has now become subject to the control of the state, or to actual prohibition at the will of the state. The changing conditions of society have made an imperative call upon the state for the exercise of these additional powers, and the welfare of society demands that the state should assume these powers, and it is the duty of the court to sustain them whenever it is found that they are based upon the idea of the promotion and protection of society."

If, therefore, the act in controversy has a reasonable relation to the protection of the public health, morals, safety or welfare, it is not to be set aside because it may incidentally deprive some person of his property without fault or take the property of one person to pay the obligations of another. To be fatally defective in these respects, the regulation must be so utterly unreasonable

and so extravagant in nature and purpose as to capriciously interfere with and destroy private rights.

That the statute here in question has the attribute of reasonableness, rather than that of capriciousness, seems incontrovertible. The evil it seeks to remedy is one that calls loudly for action. Accidents to workmen engaged in the industries enumerated in it are all but inevitable. It seems that no matter how carefully laws for the prevention of accident in such industries may be framed, or how rigidly they may be enforced, there is an element of human equation that enters into the problem which can not be eliminated and which invariably causes personal injuries and consequent financial losses to workmen engaged therein. Heretofore these losses have been borne by the injured workmen themselves, by their dependents, or by the State at large. It was the belief of the legislature that they should be borne by the industries causing them, or, perhaps more accurately, by the consumers of the products of such industries. That the principle thus sought to be put into effect is economically, sociologically, and morally sound, we think must be conceded. It is so treated by the learned counsel who have filed briefs in support of the auditor's contentions; it is so conceded by all modern statesmen, jurists, and economic writers who have voiced their opinion on the subject; and the principle has been enacted into law by nearly all of the civilized countries of Europe, by Australia, by New Zealand, by the Transvaal, by the principal Provinces of the Dominion of Canada, and in a partial form at least by one or more of South American Republics. Indeed, so universal is the sentiment that to assert to the contrary is to turn the face against the enlightened opinion of mankind. The common law does not purport to afford a remedy for the condition here found to exist. It affords relief to an injured workman in only a limited number of cases; cases where the injury is the result of fault on the part of the employer

and there is want of fault on the part of the workman. For the greater number of injuries traceable to the dangers incident to industry, no remedy at all is afforded. The act, therefore, having in its support these economic and moral considerations, is not unconstitutional for the reasons suggested upon this branch of the argument.

Passing to the second objection, it is well settled that neither the clause of the State constitution prohibiting class legislation, nor the clause of the fourteenth amendment to the Constitution of the United States relating to the equal protection of the laws, takes from the State the power to classify in the adoption of police regulations. The limitations imposed admit of a wide discretion in this respect, and avoid only what is done without any reasonable basis; that is, such regulations as are in their nature arbitrary. The learned counsel for the auditor recognize this distinction, and consequently do not attack the act because it is confined to extra hazardous occupations as its field of regulation, but complain because its benefits are not confined to workmen injured while engaged in such occupations. It is claimed that the act allows workmen employed in such industries the benefit of the act when injured outside of the line of their duties, or when engaged in the business of the concern in a capacity not affected by the peculiar hazards of the business. We have quoted enough of the statute to show that it is somewhat obscure in these respects, but we are not inclined to think the point fatal to the act, even though we concede counsel's interpretation of it to be the correct one. In section 27, the legislature has made it clear that it did not intend the provisions relating to those who are entitled to partake of its benefits to be so far an integral part of the act that it could not be eliminated in part without destroying the act in its entirety. It is there expressly provided that the adjudication of invalidity of any part of the act shall not affect the validity of the act as a

whole or any other part thereof. This means that the legislature intended the act to be enforced as far as it may be, even though it might not be valid in its entirety. It was competent for the legislature so to provide. Anything it could have eliminated itself and left an operative act, can be eliminated by the courts without destroying the entire act, if it is the will of the legislature that the remaining parts of the act shall stand after such elimination. So here, if it be true that the legislature has gone too far in this direction, and has attempted to include within its benefits certain employés who can not be included without including employés generally, these can be omitted in the administration of the act without the necessity of nullifying the entire act. But whether any such workmen are so improperly included, we shall not here determine. The question can best be met when it arises during the course of the act's administration.

Again, it is said that the act violates the provisions relating to class legislation because it diverts the contributions exacted from the numerous industries to the relief of a particular class of injured and disabled workmen, instead of applying it to the relief of injured workmen generally or applying it to the use of the State at large. But to divert the money collected in this manner to a special use is one of the prerogatives of legislation. The right of the State to regulate any form of industry arises from the fact that its pursuit affects injuriously the health, safety, morals, or welfare of the persons engaged in it, or is inimical in some form to some portion of the individuals of the community. It is not necessary that it always affect injuriously the public at large. On the contrary, it may be regulated if it affects injuriously those engaged in it, or those brought in direct contact with it, even though its pursuit may benefit generally the people of the State at large. Nor is there any particular form which the regulation must take. The conduct of the business may be prohibited

entirely in a particular place or in a particular manner; its pursuit may be restricted to certain hours of the day; it may be permitted to be conducted only in case protective devices are used; or it may be permitted in certain forms and a sum of money exacted from the individuals carrying it on for the purpose of recompensing those who suffer losses because thereof.

So in this instance, if the legislature believed that to permit the pursuit of the industries named after the present manner of conducting them was generally for the public good in spite of the losses the method of pursuit entailed, there is no reason why it should not confine its regulations to compelling the owners and conductors of such industries to create a fund out of which the losses caused thereby should be made good. That legislation in this form is not class legislation, nor a denial to owners of property of the equal protection of the laws is well sustained by authority.

In Jensen v. South Dakota Cent. R. Co., supra, the court, discussing the question, used this language:

"The exercise of the police power in this class of cases is based upon the ground that, where persons are engaged in a calling or business attended with danger to other persons and their property, then the legislature may step in and impose conditions upon the exercise of such calling or business for the general good and welfare of society, and may prescribe the terms on which such dangerous calling or business will be permitted to be carried on by persons in charge thereof, whether such persons happen to be private individuals or railway corporations. The fact that such legislative exercise of the police power applies alike to all persons and all corporations engaging in such dangerous calling or business relieves it from the charge and contention that there is a denial of equal protection under the law by reason of such enactments."

In Firemen's Benevolent Ass'n v. Lounsbury, supra,

the court had under consideration a statute of the State of Illinois which created a corporation called the Firemen's Benevolent Association, and required every insurance agent in the city of Chicago to pay to the association a fixed percentage upon the amount of fire insurance premiums collected by him per year from fire insurance effected upon property in the city, to be used solely for the relief of distressed, sick, injured, or disabled firemen and their immediate families. Answering the objection that the act was void as class legislation, the court said:

"There is nothing to be found in the constitution which can be held to inhibit the legislature from imposing burthens, or raising money from citizens of the State, which is not for the direct benefit of the State, and is never designed to belong to the State. To deprive the legislature of this power, would to a great extent destroy its usefulness—while it would to a certain extent, deprive it of the power of abuse, it would destroy its power to regulate by law a thousand things, which the public good requires should be regulated by law. * * * Let us once hold that the legislature could not compel any citizen to submit to a burthen, except for the benefit of the State aggregate, or for some subdivision of it, as a county, city or town, or to pay any money except it shall go into the State or some subordinate public treasury, and we should soon find ourselves on the brink of anarchy itself—we should tie up the hands of the legislature it is true, so that they might not do some evils which they have hitherto had the power of doing; but we should also let loose upon society ten thousand evils, which in every well-regulated community it has always been the duty of the legislature to suppress. It is in the exercise of this indispensable power, that ferries, toll bridges and the like are licensed or chartered. The legislature, finding it necessary to afford especial encouragement to private enterprise to erect a

bridge or a ferry, has ever exercised the power of imposing a burthen on some, for the benefit of others. Who ever doubted the right of the legislature to charter a bridge and to require all persons crossing the stream within certain limits, to pay the tolls, whether they cross on the bridge or not? It is the exercise of the same power, which fixes the fees of officers for the performance of certain services. It is the power which the legislature possesses, of imposing burthens upon certain members of the community who are supposed to be benefited, by the efforts or acts of certain other members of the community, as a reward or compensation for such acts. * * * It would fill a volume to enumerate all the familiar instances of the exercise of this power —a power which must be exercised constantly in every civilized community, or the well being of that community must vitally suffer."

In State v. Cassidy, 22 Minn. 312, 21 Am. Rep. 765, the court sustained an act which required the vendors of intoxicating liquors to pay a fixed sum per annum into the State treasury, in addition to the usual license fee, as a fund to be disbursed by a State commission in the creation and operation of a State asylum for the care and cure of inebriates. The court in its opinion points out that the act is an exercise of police power, saying:

"It regards the traffic as one tending to produce intemperance, and as likely, by reason thereof, to entail upon the State the expense and burthen of providing for a class of persons rendered incapable of self-support, the evil influence of whose presence and example upon society is necessarily injurious to the public welfare and prosperity, and, therefore, calls for such legislative interposition as will operate as a restraint upon the business, and protect the community from the mischiefs, evils and pecuniary burthens flowing from its prosecution. * * * That these provisions unmistakably partake of the na-

ture of police regulations, and are strictly of that character, there can be no doubt, nor can it be denied that their expediency or necessity is solely a legislative, and not a judicial, question. * * *

"Regarding the law as a precautionary measure, intended to operate as a wholesome restraint upon the traffic, and as a protection to society against its consequent evils, the exacted fee is not unreasonable in amount, and the purpose to which it is devoted is strictly pertinent and appropriate. It could not be questioned but that a reasonable sum imposed in the way of an indemnity to the State against the expense of maintaining a police force to supervise the conduct of those engaged in the business, and to guard against the disorders and infractions of law occasioned by its prosecution, would be a legitimate exercise of the police power, and not open to the objection that it was a tax for the purpose of revenue, and, therefore, unconstitutional. Reclaiming the inebriate, restoring him to society, prepared again to discharge the duties of citizenship, equally promotes the public welfare, and tends to the accomplishment of like beneficial results, and it is difficult to see wherein the imposition of a reasonable license fee would be any the less a proper exercise of this power in the one case than in the other. The purpose to which the license fund created by the act is designated is more consonant to the idea of regulating the traffic and preventing its evils than is the case under the general license law, which devotes the fees received to common-school purposes, and we are not aware that any objection has ever been urged against that law on that account."

A statute of Kentucky imposed upon all dogs a tax at a fixed sum per capita, to be paid by their owners, for the creation of a fund to be disbursed to sheep growers whose sheep should be injured or destroyed by the ravages of dogs. In McGlone v. Womack, 129 Ky. 274, 111 S. W. 688, 17 L. R. A. (N. S.) 855, this statute was chal-

lenged by a number of owners of dogs on the ground that it violated the State constitution. Answering the objection that it was class legislation, the court said:

"Nor do we think the act is inimical to that portion of section 3 of the bill of rights which provides: '* * * And no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services. * * *' As we view it, the statute does not confer any special privilege on the owner of sheep. It merely protects these owners from the destruction of their property by dogs. It is the duty of the State to protect every citizen in his life, liberty, and property; and it certainly is within the competency of the legislature to exercise the police power of the State to protect all property against the ravages of destructive animals. The question as to how this is to be done and what property is to be so protected is a matter of legislative discretion. Undoubtedly the sheep industry is a most important one to the whole State. All of our citizens are interested in an industry which supplies the market with wholesome meat, provides means of obtaining warm and comfortable clothing, and at the same time furnishes labor to the otherwise unemployed. It is only necessary to allude to this phase of the question. The importance of the industry as a whole is most obvious. It is equally obvious that sheep are peculiarly liable to the ravages of dogs. They have neither the fleetness to escape nor the courage to defend themselves from attack, and their silent suffering enables the dog to prey upon them without any danger that the owner will be warned of the destruction of his property by the outcry of the dying animal. * * * The fact that sheep are generally killed at night when it is impossible to ascertain the owner of the dog committing the ravage makes it necessary, if protection is to be had through this channel at all, that each owner of a dog should be required to contribute a small amount to

a common fund dedicated to the remuneration of owners of sheep killed by unknown dogs. As said before, this is simply requiring the owners of dogs to make good the ravages of dangerous animals kept by them; and no citizen has just cause of complaint, if he keeps animals destructive to the property of others, that he is required to make good the damages done by them. The statute in truth, is but an enforcement of the maximum, 'sic utere tuo ut alienum non laedas,' and, as such, its constitutionality is beyond successful question."

(See, also, Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393, 17 L. R. A. (N. S.) 984; Mitchell v. Williams, 27 Ind. 62; Van Horn v. People, 46 Mich. 183, 9 N. W. 246, 41 Am. Rep. 159; Cole v. Hall, 103 Ill. 30; Longyear v. Buck, 83 Mich. 236, 47 N. W. 234, 10 L. R. A. 43; Holst v. Roe, 39 Ohio St. 340, 48 Am. Rep. 459; State v. Frame, 39 Ohio St. 399.)

The foregoing cases, while defending the statute here in question against the charge of class legislation, are interesting from another aspect also. They furnish examples of constitutional statutes creating liability without fault. To effect insurance as an agent, to sell intoxicating liquors where not forbidden by the State, or to own and keep dogs, is not of itself unlawful; and it would seem that any reason which would justify the levying of a tax on persons pursuing these occupations as business callings, or owning and keeping the species of property mentioned, would justify the levy sought to be made by the act before us.

The third principal objection to the constitutionality of the act is that it violates the provisions of the constitution designed to secure equal and uniform taxation of property for public purposes. As the charge laid on the persons engaged in the industries named in the act is a pecuniary burden imposed by public authority, it partakes of the nature of a tax, and in the language of a distinguished judge discussing a similar question, "for

many purposes might be so spoken of without harm." But it is manifest that it is not a tax in the sense the word is used in the sections of the constitution to which reference is here made. No accession to the public revenue, general or local, is authorized or aimed at. The purpose of the exaction is entirely different. It is to be used, not to meet the current expenses of government, but to recompense employés of the industries on whom the burden is imposed for injuries received by them while engaged in the pursuit of their employment. It is the consideration which the owners of the industries pay for the privilege of carrying them on. It is, therefore, in the nature of a license tax, and can be justified on the principle of law that justifies the imposition and collection of license taxes generally. In this State, such taxes may be imposed, either as a regulation or for the purposes of revenue, the only limitation upon the power being that such taxes when imposed on useful trades and industries shall not be unreasonable, and if a class of trades or industries is selected from the whole, and the tax imposed upon the class selected alone rather than upon the whole, that there be some reasonable ground for making the distinction. (Walla Walla v. Ferdon, 21 Wash. 308, 57 Pac. 796; Fleetwood v. Read, 21 Wash. 547, 58 Pac. 665, 47 L. R. A. 205; Stull v. DeMattos, 23 Wash. 71; 62 Pac. 451, 51 L. R. A. 892; Seattle v. Barto, 31 Wash. 141, 71 Pac. 735; In re Garfinkle, 37 Wash. 650, 80 Pac. 188; Oilure Mfg. Co. v. Pidduck-Ross Co., 38 Wash. 137, 80 Pac. 276; McKnight v. Hodge, 55 Wash. 289, 104 Pac. 504.)

The general rule governing the right to impose such license taxes is well stated by Judge Brewer in City of Newton v. Atchison, 31 Kan. 151, 1 Pac. 288, 47 Am. Rep. 486, in the following language:

"Before noticing some specific objections which are made to this particular tax, we think it proper to state

certain general propositions which underlie this matter of a license tax.

"First. In the absence of any inhibition, express or implied, in the constitution, the legislature has power, either directly to levy and collect license taxes on any business or occupation, or to delegate like authority to a municipal corporation. This seems to be the concurrent voice of all the authorities. In 1 Dillon on Municipal Corporations, 3d ed., sec. 357, note, the author says: 'Unless specially restrained by the constitution, the legislature may provide for the taxing of any occupation or trade, and may confer this power upon municipal corporations.' In Burroughs on Taxation, page 148, is this language: 'Where the constitution is silent on the subject, the right of the State to exact from its citizens a tax regulated by the avocations they pursue, can not be questioned.' In Savings Society v. Coite, 6 Wall. 606, the Supreme Court of the United States, thus states the law: 'Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of the State government.' (Hamilton Co. v. Massachusetts, 6 Wall. 638; Cooley on Taxation, 384 to 392, 410.) On page 384 the author observes, 'The same is true of occupations; government may tax one, or it may tax all. There is no restriction upon its power in this regard unless one is expressly imposed by the constitution.'

"In State Tax on Foreign-held Bonds, 15 Wall. 300, Field, J., among other things, speaking of the power of taxation, says:

" 'It may touch property in every shape, in its natural condition, in its manufactured form and in its various transmutations. And the amount of taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch busi-

ness in the almost infinite forms in which it is conducted; in professions, in commerce, in manufactures, and in transportation. Unless restrained by the constitution, the power as the mode, form and extent of taxation is unlimited.'

"(See also the authorities collected in Fretwell v. City of Troy, 18 Kas. 274.) Nor does this rest alone upon a mere matter of authority. Full legislative power is, save as specially restricted by the constitution, vested in the legislature. Taxation is a legislative power. Full discretion and control therefore in reference to it are vested in the legislature, save when specially restricted. There is no inherent vice in the taxation of avocations. On the contrary, business is as legitimate an object of the taxing power as property. Oftentimes a tax on the former results in a more even and exact justice than one on the latter. Indeed, the taxing power is not limited to either property or avocation. It may, as was in fact done during the late war and the years immediately succeeding, be cast upon incomes, or placed upon deeds and other instruments. We know there is quite a prejudice against occupation taxes. It is thought to be really double taxation. Judge Dillon well says that 'such taxes are apt to be inequitable, and the principle not free from danger of great abuse.' Yet, wisely imposed, they will go far toward equalizing public burdens. A lawyer and a merchant may, out of their respective avocations, obtain the same income. Each receives the same protection and enjoys the same benefits of society and government. Yet the one having tangible property pays taxes; the other, whose property is all in legal learning and skill, wholly intangible, pays nothing. A wisely-adjusted occupation tax equalizes these inequalities. But after all, these are questions of policy, and for legislative consideration. It is enough for the courts that both occupation and property are legitimate objects of taxation; that they are essentially dissimilar; that con-

stitutional provisions regulating the taxation of one do not control that of the other; and that there are no constitutional inhibitions on the taxation of business, either by the legislature directly, or by the municipal corporations thereto empowered by the legislature.

"Second. There is no inhibition, expressed or implied, in our constitution, on the power of the legislature to levy and collect license taxes, or to delegate like power to municipal corporations. It is not pretended that there is any express inhibition. It has been contended that section 1, article 11, creates an implied inhibition, and this because it reads that 'the legislature shall provide for a uniform and equal rate of assessment and taxation.' But that section obviously refers to property, and not to license taxes."

In Fleetwood v. Read, supra, this court, discussing the question whether taxation of this sort was prohibited by the constitution, said:

"It is insisted, also that the ordinance is void because it imposes a burden upon a portion, and not the whole, of a class of merchants. We do not think this contention is tenable. The ordinance does apply to all merchants who see fit to engage in the business of buying tickets of that kind, and the constitutional provision (art. 1, sec. 12) that no law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations, can not be invoked against this ordinance. The adjudicated cases in this respect are so numerous that it is scarcely worth while to mention them here.

"The ordinance can not be held void on account of excessive burden imposed. It is not so oppressive that it will in any way interfere with the rights of merchants. However wrong the policy may be which prompted the enactment of this ordinance, or however doubtful the propriety of passing such an ordinance, those are ques-

tions which are submitted by the legislature to the discretion of the council, and upon them it is not our province to comment. We think without further investigation, that there is no doubt that the ordinance is warranted by legislative authority.

"Some question was raised by the court at the time of the argument of this case in relation to the ordinance being in conflict with secs. 1, 2 and 9 of art. 7 of the State constitution, which provide for uniformity in taxation. Counsel for the respondent was requested by the court to furnish it with a brief on that subject, which he did, and upon an examination of the cases cited and of other cases, we have become convinced that the question raised by the court was not a question pertinent in this case; that, under the great weight of authority, a tax on occupation, business, etc., is not, in legal contemplation, a tax on property, which falls within the inhibition imposed by the usual constitutional provisions in relation to uniformity of taxation; and, in consideration of the fact that the State constitution is a limitation upon the actions and powers of the legislature instead of a grant of power, that the power of the legislature to tax trades, professions and occupations is, in the absence of constitutional restriction, a matter within its absolute control and resting entirely in sound legislative discretion."

The sums exacted from the several industries named we think may be treated as partaking both of the nature of a license for revenue and regulation; as such, however, we find nothing in the principle inimical to either the State or Federal constitutions.

The fourth principal reason for which the act is thought to be unconstitutional is that it interferes with the right of trial by jury. It is said that the legislature can not fix a Procrustean rule for the admeasurement of damages arising from injuries received by one in the employment of another, as the employer and the employé alike have the right to submit to a jury both the

question of the right to recover for any such injury, and the question of the amount that may be recovered therefor. But we can not think the rule absolute. It may be that the legislature can not fix the amount of recovery, or provide for an absolute recovery, in all cases where one person is injured by another, regardless of the relation of the parties, or the question whether the injury is or is not the result of negligence; but it does not follow that it may not so provide where the injury happens in that class of employments subject to legislative regulation and control. If it be, as we have attempted to show, a proper regulation of hazardous industries to compel those engaged therein as owners or operators to pay a fixed sum into a fund to be used for the purpose of compensating the employés thereof for injuries received by them, it is difficult to understand why it is not also proper regulation to require the employés of such industries to accept a given sum for any injury that they may receive while so engaged. The same power that authorizes the State to regulate the participation of the one in the particular industry would seem to authorize it to regulate the participation of the other therein. Theoretically, of course, the employer and employé, on entering into a contract by which the one engages the services of the other, stand on the same plane; but in practice, as it is well known, this ideal condition very seldom exists. Greed and sagacity on the one side, and necessity and incapacity on the other, some time lead to contracts that create conditions little short of peonage; and our own reports abound with instances where men have been induced to work in situations so dangerous to life and limb that the wonder is not that some of them were injured, but rather, that any of them escaped injury. Indeed, it is a common thing for an employer, in defense of an action of damages brought by his employé for injury received in such a situation, to urge that the dangers of the place were so

obvious and apparent that the employé was guilty of contributory negligence for working therein. These conditions, we think, authorize the interference of the legislature. The grounds upon which the employer may be held to contribute to a fund for the relief of all injuries sustained by his employés whatever the cause, we have already stated. The obligation of the employé to accept the conditions of the statute can rest on like grounds: namely, the welfare of the State. The relation being one of contract between employer and employé, the State may make it a condition of the contract that the employé shall accept a fixed sum for any injury he may receive while engaged in the employment, whether the injury be the result of the inherent dangers of the employment or the result of some fault of his employer.

There is, of course, no direct authority supporting the contention that the right of trial by jury may be thus taken away. There are, however, cases maintaining principles more or less analogous to the principle thus involved. Of these State v. Buchanan, and Holden v. Hardy, supra, are illustrative. In these cases it is held that the legislature may limit the number of hours a workman shall be permitted to labor in certain classes of employments, on the principle that to do so is to protect the health of the individual workman and thus contribute to the public welfare. If it be within the rule of the police powers of the State to interfere with the workman's personal freedom in this regard, it would seem to be no greater stretch of power to go one step farther and provide that if he be injured while so laboring, he shall receive a sure award in a limited sum as compensation for his injury, and in lieu thereof shall forego his common law action in damages therefor.

The common-law system of making awards for personal injuries has no such inherent merit as to make a change undesirable. While courts have often said that

the question of the amount of compensation to be awarded for a personal injury is one peculiarly within the province of the jury to determine, the remark has been induced rather because no better method for solving the problem is afforded by that system than because of the belief that no better method could be devised. No one knows better than judges of courts of nisi prius and of review that the common-law method of making such awards, even in those instances to which it is applicable, proves in practice most unsatisfactory. All judges have been witnesses to extravagant awards made for most trivial injuries, and trivial awards made for injuries ruinous in their nature; and perhaps no verdicts of juries are interfered with so often by the courts as verdicts making awards in such cases. There is no standard of measurement that the court can submit to the jury by which they can determine the amount of the award. The test of reasonableness means but little to the ordinary juror. Unused as he is generally to witnessing the results of injuries, he is inclined to measure his verdict by the amount of disorder he observes, rather than by the actual amount of disablement the injury has caused. Nor is he aided in this respect by the testimony of medical experts. Conflicting as such testimony usually is, it tends rather to confuse than to enlighten him. Perhaps the whole difficulty lies in the fact that the question is too much one of opinion, and not enough of fact. It must be remembered, also, that the remedy afforded by the common law, as we have elsewhere remarked, can be applied only in a limited number of cases of injury; cases where the injury is the result of negligence on the part of the employer, not contributed to by the employé. For the greater number of injuries the common law affords no remedy at all. For this unscientific system, it is proposed to substitute a system which will make an award in all cases of injury, regardless of the cause or manner of its in-

fliction; limited in amount, it is true, but commensurate in some degree to the disability suffered. The desirability of this substitution is unquestioned, and we believe that the legislature had the power to make it without violating any principle of the fundamental law.

The objection may be answered also in another way. The constitution does not undertake to define what shall constitute a cause of action, nor to prohibit the legislature from so doing. The right of trial by jury accorded by the constitution, as applicable to civil cases, is incident only to causes of action recognized by law. The act here in question takes away the cause of action, on the one hand, and the ground of defense, on the other; and merges both in a statutory indemnity, fixed and certain. If the power to do away with a cause of action in any case exists at all, in the exercise of the police power of the State, then the right of trial by jury is thereafter no longer involved in such cases. The right of jury trial being incidental to the right of action, to destroy the one is to leave the other nothing upon which to operate.

The auditor also complains of the scheme adopted by the legislature for correcting the evil they have found to exist. It is said that the scheme is unduly cumbersome; that its administration will prove unnecessarily costly and burdensome to those whose interests are affected by it, and will lead to public and private abuses and consequent evils more dangerous to the State than the evil that it is sought to correct. But the courts are slow to inquire into the mere wisdom of a statute. This question is so pre-eminently one for the law-making branch of the Government that the courts will interfere only where there can be no two opinions as to the mischievous and evil tendencies of the act. The act in question here was framed by a commission composed of men eminent for their ability, who gave to the work extended consideration. It was selected by the legis-

lature from among a number of proposed acts having a similar purpose submitted for their examination; and this, too, after its evil tendencies had been fully pointed out by the representatives of the different interests to be affected by it. In the light of these facts, the court can not do otherwise than put it to the test of practice. Moreover, the question becomes one of less importance when it is remembered that the sessions of the legislature are sufficiently close together to enable that body to correct any evil influence the enforcement of the act may have before it becomes unduly harmful.

In the foregoing discussion we have not referred to the decision of the Court of Appeals of the State of New York in the case of Ives v. South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431 [Bulletin No. 92, p. 251], which holds the workingmen's compensation act of that State to be in conflict with the due process of law clause of the State constitution, and the fourteenth amendment to the Constitution of the United States. The case has, however, been the subject of extended consideration in the briefs of counsel, and it is urged upon us by counsel for the auditor as conclusive of the questions at bar. The act the court there had in review is dissimilar in many respects to the act before us, and is perhaps less easily defended on economic grounds. The principle embodied in the statutes is, however, the same; and it must be conceded that the case is direct authority against the position we have here taken. We shall offer no criticism of the opinion. We will only say that, notwithstanding the decision comes from the highest court of the first State of the Union, and is supported by a most persuasive argument, we have not been able to yield our consent to the views there taken.

We conclude, therefore, that the act in question violates no provision of either the State or Federal constitutions, and that the auditor should give it effect. Let the writ issue.

Dunbar, C. J., Crow, Morris, Ellis, Mount, Parker, and Gose, J. J., concur.

Chadwick, J. (concurring)—This proceeding is prosecuted by the relator, a simple contract creditor of the State. There is no party in interest before us whose interest it is to challenge the act of the legislature. This is a moot case, pure and simple, and the right of the relator to recover is in no way affected by the constitutional questions raised by the parties and discussed by the court. The legislature having created the industrial insurance commission, its power to organize can not be questioned by any one who is not affected by the terms of the law, and such expenses as it may incur are proper charges against the State and may be collected without reference to the power of the commission to levy a tribute upon certain kinds of business, or to make disbursement of the funds under the provisions of the act.

Without questioning or discussing the conclusions of the court upon the first three propositions advanced, with all of which I agree, the fourth proposition should not now be decided for the very palpable reason that our decision is binding upon no one, not even upon the court. No one will contend that it is of any concern to a furniture dealer who is seeking to collect his account whether an injured workman is to be deprived of the right to submit his cause to a jury of his peers. The principle is too important to be mooted by the court, for some day a real party in interest will be before us—either an employer who feels aggrieved at the operation of the law, or a workman who has received injuries which the accepted schedules will not compensate; and we will be put to the duty of deciding the case without reference to our present decision, so that the Federal questions involved may pass for final hearing to the Supreme Court of the United States.

The right to recover damages for personal injuries suffered in consequence of the negligence of another

was an admitted right at common law, so that the question whether the seventh amendment to the Constitution of the United States, which preserves the right of trial by jury in all cases maintainable at common law which are begun in the courts of the United States, would not compel a Federal court to ignore our statute, could be compelled to contribute to the indemnity fund and the consequent question, whether a party assessed unless he is to be protected from all suits of like character, becomes most material, and it is to be hoped that we will have an early opportunity to meet these issues in a proper case.

That the people of the State of Washington can take away a right of action, or abolish the right of trial by jury, I have no doubt, but whether the legislature can do so without the warrant of the whole people expressed by way of amendment or repeal of sections 3 and 21 of article 1 of the State constitution, is a grave question which is not discussed in the opinion of the court. The right of trial by jury has ever been regarded as the very sinew of liberty. It was the cardinal principle of the great charter, and "It is worthy of note that all that is extant of the legislation of the Plymouth Colony for the first five years, consists of the single regulation 'that all criminal facts, and also all manner of trespasses and debts between man and man, shall be tried by the verdict of twelve honest men, to be impaneled by authority, in form of a jury upon their oath.' (1 Palfrey's New England, 340." Cooley's Const. Limitations (6th ed.), p. 389, n.)

The right is asserted in every State constitution. Sec. 21, supra, provides that "the right of trial by jury shall remain inviolate." No distinction is made between civil and criminal cases; indeed the additional text would indicate that no distinction was intended. This guarantee has been held by this court to apply to all civil law actions maintainable at common law. (State

ex rel. Mullen v. Doherty, 16 Wash. 382, 47 Pac. 958, 58 Am. St. 39.) I am a firm believer in trial by jury and am of equal faith that the will of the people as declared in their written constitution is binding upon legislatures as well as courts, until the people by like adoption express a contrary will. We should not decide otherwise except at the suit of a proper party.

The present law seems to be greatly to the advantage of the employer for whom an easy method of discharging an obligation to his injured employé is provided, but whether the legislature can take from the workingman his right to have the amount of his compensation fixed by an authority less than the very people, who have said "the right of trial by jury shall remain inviolate," is for future hearing.

I have not advanced these observations in the way of objections, for the result of the court's opinion is a consummation for which I have devoutly hoped; but to indicate merely that our decision upon the fourth proposition—the right of trial by jury—is not settled by this decision and should not be so regarded, and further, in the event that it be finally held that a jury trial can not be dispensed with, under our present constitution, that the objection may be easily overcome without doing violence to the purpose or principle of the act, and without amendment to the constitution, by providing that, in the event of a dispute as to the amount of compensation, a jury shall be called to try that issue and that its verdict shall be conclusive.

Upon the fourth proposition, therefore, I reserve my opinion until such time as its expression will have the force of law.

There being no question that the relator has a right to recover the amount due on its account, it follows that the writ should issue.

§ 128. Rules and directions.—Sections 21 to 26 of the Washington Act provide for the creation of the Washington State Industrial Insurance Department and appointment of Commissioners to administer the same, and authorizes the Commissioners to prescribe appropriate rules and directions for the proper administration of the law, both respecting the employers and employés covered by the same. These rules and directions are set forth in full in the following sections:

§ 129. Rules and direction for employers.—1. Whenever any accident occurs to any workman (in your plant or establishment) it shall be the duty of the employer to at once report such accident to the Commission, for which use Industrial Insurance Blank Form (k), § 143. Blank reports for such purpose may be secured by applying for same to the Commission or at one of the branch offices herinafter mentioned. These reports must be filled out accurately, immediately and in detail as required by section 14 of the law.

2. Where an injured workman files a claim for compensation, it shall be the duty of the physician and also of the employer to inform and advise the injured workman (or his relatives or dependents in case of death) of his rights under the Compensation Law and to lend all necessary assistance in aiding the workman in making his claim and such proof as the Commission may require. Such assistance is to be "without charge to the workman" as required and provided in section 12 of the law. Blanks for filing claims for compensation (Form (1), § 144) will be sent to the different employers, and if not, may be secured by writing the Commission, or at any branch office of the Commission. Each employer should have these and other blanks on hand at all times so that prompt reports may be made to the Commission of all accidents.

3. Each employer should assist his injured em-

ployés in securing their rights under the law. The entire matter is between the employer, employé and the State. In assisting your injured workmen and doing all that you can for their benefit or relief, you in no way injure or prejudice yourself. Such assistance will tend to produce more cordial relations between employer and workmen and greatly expedite and facilitate the operation and administration of the Compensation Law. In all matters of doubt or dispute address the Commission direct. No claim for compensation is valid unless filed within one year after date of injury and all workmen should be so advised.

4. Section 11 of the law specifically provides that no employer or workman shall exempt himself from the burden or waive the benefits of the law by any contract, rule or regulation, and any such contract, rule or regulation shall be void.

5. Employers should inform and advise their injured workmen that section 10 of the law provides that no money paid or payable under the Compensation Law shall, prior to issuance and delivery of the warrant, be assigned, charged, or even be taken in execution or attached and garnished. Any such assignment or charge shall be void.

6. Section 9 of the law relating to "Employer's responsibility for safeguards" and inflicting heavy penalties in case of injury due to the absence of safeguard, should be closely observed. All statutory safeguards should be maintained and the departmental rulings of the State Labor Commission and of this Commission carefully observed. Otherwise serious penalties may be imposed in case of accident. If any workman remove any such safeguard this Commission should be advised.

7. Section 8 of the law relating to employers who fail or refuse to make their payments into the "accident fund" should be carefully observed. Default in the pay-

ment of any premium means great risk and peril on the part of the defaulting employer.

8. Employers should notify this Commission of any work or establishment, which because of poor, careless or negligent management, is unduly dangerous and hazardous in comparison with other like or similar works or establishments. This notice is necessary in order to protect the careful employer.

9. The attention of employers is directed to section 16 of the law which imposes an extremely heavy penalty for misrepresenting to the Commission the amount of the payroll upon which the employer's premium under the law is based. The employer who so misrepresents is liable to the State ten (10) times the amount of the difference in premium paid and the amount the employer should have paid. The traveling auditors of the Commission will at all times assist the employers in computing their premiums under the law. If any employer in your line of business or class misrepresents his payroll you should so advise the Commission. Such misrepresentation means loss to you eventually and not to the State, as thereby your particular class fund is diminished.

10. Section 19 of the Act provides that any employer and his workmen engaged in works not extra hazardous (such as clerical help, etc., etc.), may jointly elect to accept the provisions of the act, and if so, are then entirely within the terms of the law. The rate of premium on such non-hazardous employment is 1.35 per cent. of the payroll, to be paid quarterly, and thereafter monthly as required. Blanks for elective adoption covering non-hazardous work may be secured by addressing the Commission or at any branch office of the Commission, requesting Blank Form (e), § 137. Whenever the workman may be subjected to danger or hazard it is highly desirable that both he and the em-

ployer come under the Compensation Act, thus affording mutual protection.

11. The Compensation Act in no way interferes with any of the usual hospital arrangements between employers and employés. Whenever possible it is desirable that such arrangements be continued in order that injured workmen may receive immediate hospital and medical attention.

12. The employment of competent foremen and superintendents and the exercise of care in the management of all establishments within the scope of the law is necessary in order to reduce accidents to a minimum. The employer's contributions to the "accident fund" created by the Compensation Law will depend entirely upon the number of accidents to workmen.

13. When any new industry is started or any suspended business resumes operation the Commission should be advised so that payrolls can be secured and the new or revised industry subjected to the requirements of the Compensation Law.

14. Employers desiring copies of the Workmen's Compensation Act may secure the same by applying to the Commission. Any other data with reference to the law, its administration or operation, may be secured from the Commission.

15. Branch offices of the Commission are located at 524 Haight Building, Seattle, No. 1009 South "A" Street, Tacoma, and 410 Fernwell Building, Spokane. Blanks, copies of the law, data, information, etc., can be secured at any time at these offices.

16. All statutes relating to safeguards and protection of machinery and all departmental rulings or regulations with reference thereto should be carefully complied with and observed. If accidents are reduced to a minimum, then necessarily the enforced contributions of employers under the Compensation Law will be reduced accordingly. One of the chief purposes of the

law is to reduce and minimize accidents and conserve human life and limb. Employés as well as employers should constantly bear this fact in mind.

17. Section 15 of the law provides that "the books, records and payrolls of the employer pertinent to the administration of the Act shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed and such other information as may be necessary for the department and its management under this Act." Refusal to permit such inspection is made a crime.

18. The Commission will be in session on Monday of each week, at which time objections, criticisms, suggestions, protests, etc., etc., will be heard and considered. Employers and employés having matters to present to the Commission may do so at such meetings.

§ 130. Rules and directions for workmen.— 1. Any injured workman entitled to compensation under the law must file at once with the Commission his claim for compensation on Form (1), § 144. These claim blanks can be secured by writing direct to the Commission or by applying at either of the following offices: 524 Haight Building, Seattle; No. 1009 South "A" Street, Tacoma; 410 Fernwell Building, Spokane. Claims for compensation must be filled out carefully and accurately.

2. The injured workman must also file at once with the department the certificate or report of the physician who attended him. This report is Form (m), § 146, of Commission, and may be secured by workmen or physicians at either of the above offices.

3. Section 12 of the law requires the attending physician to assist the injured workman in making application for compensation.

4. In case of death the relatives or dependents of

the deceased workman must file claim for compensation upon blank forms to be furnished by the Commission.

5. No claim for compensation will be considered and no compensation awarded unless all necessary blanks furnished and required by the Commission are filled out accurately, carefully and completely to the satisfaction of the Commission.

6. No claim for compensation by any injured workmen will be considered unless filed within one year after date of injury. (Section 12).

7. Whenever requested by the Commission any injured workman shall submit to a medical examination by one of the Commission's examining physicians. In case of refusal to submit to such examination all compensation will be suspended and nothing further will be done in the consideration of the claim for compensation, until the necessary and required official examination occurs.

8. In case of removal of any safeguard or protective device on machinery by the superintendent, foreman or any other person, the Commission should be immediately notified. If any injury results to any workman because of the removal of any safeguard by himself, then in such case the workman's compensation is reduced ten per cent.

9. In case of injury the workman should consult the employer or address this department at once for blank forms upon which to make claim for compensation. Litigation under the law is unnecessary and would be useless.

10. Whenever necessary the Commission reserves the right to supervise the medical, surgical and hospital treatment of the injured workman. (Section 24).

11. All workmen should assist each other and their employers in the earnest attempt to avoid accidents. Fewer accidents mean less pain, happier homes and greater prosperity.

§ 131. Form of general directions to employés to be posted on all floors of plant.

Workmen's Compensation Act of Washington requires every employer to post conspicuously on each floor of his plant, factory or place of business:

"On and after October 1st, 1911, all workmen employed on or about power driven machinery or in any dangerous work are entitled to receive compensation, if injured, according to the law.

WHAT TO DO IF INJURED.

"1. Make out a claim AT ONCE or have some one do it for you.

"Use blank (1) which you can get from your employer, or from the Industrial Insurance Commission in Olympia, or from any of its branch offices as follows:

"Seattle, 524 Haight Building.

"Tacoma, 506 Bank of California Building.

"Spokane, 410 Fernwell Building.

"Fill out and sign claim and send back to main office in Olympia.

"2. Get the doctor who attends you to make out a report and send it in. This blank report can be secured from any of the above offices. You may call any doctor you like. Section 12 of the law requires the attending physician to help you in making out these blanks.

"3. If possible, get a report of witnesses who saw the accident—Form (o). This blank can be secured at above offices and may save trouble later.

"4. In case of death, relatives or dependents must make the claim and blanks will be furnished them when requested.

"5. Fill out the blanks fully and carefully. Action upon your claim wil be delayed unless reports are made out promptly and correctly.

"6. Make out your claim AT ONCE. Prompt action will assist you in getting early compensation.

"7. Don't hire a lawyer. Ask the assistance of your employer and the commission first. If you come under the law and get hurt while doing your work, you will get your money without a lawsuit.

GENERAL DIRECTIONS.

"Don't take off any safeguard or protective device. If you do, and then get hurt, it decreases or lessens your compensation 10 per cent. (See Sec. 9 of the law.)

"If the superintendent, foreman or any other person removes a safeguard, report the fact to the Commission. Don't remove it yourself and don't let anyone else remove it.

"Don't take any chances with machinery. If you injure yourself intentionally you are not entitled to any compensation.

"If required, you must allow the Commission's physician to

examine you, but this examination will not cost you any money. It is paid for by the State. Don't refuse to be examined or your claim will not be considered.

"Keep blanks on hand or ask your employer to keep them on hand for you. They don't cost him anything, and the sooner you make a proper claim, the sooner it will be settled.

"Don't hesitate to lend a hand when anyone is hurt. It is to your interest and to your employer's interest to decrease or lessen the number of accidents and deaths and keep as many workmen at work as possible.

"The state will try and give you reasonable compensation in case of injury. If you do not think it is sufficient, remember that it is much better than lawsuits and delays under the old system.

INDUSTRIAL INSURANCE COMMISSION,
Of Washington.

GEO. A. LEE.
C. A. PRATT,
J. H. WALLACE,
Commissioners.

§ 132. Formal procedure—List of forms.—The Industrial Insurance Commission of Washington, responding to the duties imposed upon it by the Washington Insurance Act, has, as a part of the scheme of administration devised by it, prescribed twenty-one forms which are required to be used by the employers and injured employés covered by the said act, together with certain instructions and charts which are designated as follows:

(a) Report of actual payroll (by employer);

(b) Contractors' statement of wages (by employer);

(c) Monthly statement of city of ..... of county of ..... (by employer);

(d) Notice of assessment (to employer);

(e) Elective adoption of the provisions of the Industrial Insurance Act (by employer);

(f) Demand for quarterly payment required by the Workmen's Compensation Act of the State of Washington (to employer);

(g) Monthly statement (by employers);

(h) Alphabetical list of industries with corresponding rates and classification (to employer);

(i) Instructions to cities, counties, school, port, water-way, drainage, or other municipal corporation;

(j) Letter of instruction to employers and employés;

(k) Employer's report of accident to employé with chart;

(l) Workmen's claim for compensation with instructions to injured workmen;

(m) Report of attending physician with charts;

(n) Surgical discharge report;

(o) Report of witnesses with instructions;

(p) Surgeon's special report with charts;

(q) Proof of death to be filled out by attending physician of deceased;

(r) Proof of death from undertaker;

(s) Dependent's claim for compensation;

(t) Affidavit of claimant for compensation by survivors of deceased workmen;

(u) Summary and award;

(v) Partial payment voucher, permanent partial disability—Full payment, total temporary disability—Partial payments;

(vv) Form of partial payment voucher—Total temporary disability—Monthly allowance.

(w) Form of pension voucher—Permanent total disability.

(ww) Form of pension voucher—Survivors of deceased workman.

(x) Form of burial expense voucher—Account of deceased workman.

(y) Form of final settlement voucher.

(z) Form of election to receive compensation and assignment of claim—Injuries by defaulting employer.

(zz) Election to receive compensation and assignment of claim—Injury by other than employer.

These forms are given in full in the succeeding pages in the order named above.

§ 133. Form of report of actual payroll (a):

Firm Name ____

Firm No. ____ Business Address ____

Rate ____ Class No. ____ Address of Plant ____

Kind of Business ____

To be used in Olympia office only.

Date 1912	Number Employes	Payrolls Total Amount	NON-HAZARDOUS PAYROLLS: Total Non-Hazardous	NON-HAZARDOUS PAYROLLS: Covered by Agreement at 1.35%	Amount Hazardous Payrolls	Rate	Premium	Class Number
Week Ending								
Week Ending								
Week Ending								

NOTE: If payrolls are made up monthly, make entry on last date shown for each month.

Payrolls audited by

Traveling Auditor.

Date of Examination ____

I hereby certify that the above is a true and correct statement of payroll.

Signature

Official position of person signing report

Number of Employees	HAZARDOUS OCCUPATIONS (Nature of employment only)	Number of Employees	NON-HAZARDOUS OCCUPATIONS (Nature of employment only)

§ 134. Form of contractor's statement of wages (b):

Month of_____, 19____

I,

We, _____, do hereby certify that the following is a complete, true and correct statement of the amount of wages paid by me or my sub-contractors during the month of _____, 19____, for labor performed under my contract dated _____, 19____, for _____, at _____
(Fully describe nature of work) City

for the

County of _____

Business Address _____Names of Sub-Contractors_____

No. Employes	Days Worked	Class	DESCRIPTION OF WORK	Rate Pct.	Gross Amount Payroll	Premium
		8	Asphalt Laying	3		
		6	Blasting	5		
		5	Brick Work	5		
		2	Bridges	6½		
		5	Carpenter Work, not otherwise specified	3½		
		5	Concrete Building (including removing forms)	5		
		8	Concrete Laying in Street Paving	3		
		5	Concrete Laying in Floors and Foundations	3		
		3	Ditches and Canals (other than irrigation without blasting)	6½		
		6	Electric Light or Power Plants or Systems (construction work)	5		
		13	Electric Light or Power Plants or Systems (operation of same)	4		
		1	Excavations, not otherwise specified	4		
		5	Iron or Steel Structures or Parts	8		
		5	Galvanized Iron or Tin Work	5		
		5	Gas Works or Systems (construction)	5		
		19	Gas Works or Systems (operation)	3		
		4	House Wrecking	6½		
		6	House Heating or Ventilation Systems	2		
		5	Inside Plumbing	2		
		6	Installation of Machinery (includes foundation)	3		
		6	Installat'n of Elec. Apparatus or Fire Alarm Systems in Bldgs.	2		
		5	Lathing	2		
		5	Marble, Stone or Brick Work	5		
		5	Marble, Stone or Tile Setting (inside work)	3		
		5	Ornamental Metal Work in Buildings	3½		
		5	Outside Plumbing Work (includes roughing in)	5		
		5	Paper Hanging	2		
		5	Painting Buildings or Structures	3		
		2	Paving and Repair, brick or block	2		
		3	Pile Driving	5		
		5	Plastering	2		
		8	Road Making (includes plank streets and sidewalks)	2		
		8	Road Making, with blasting	5		
		5	Roof Work	5		
		1	Sewers	6½		
		8	Street or Other Grading	3½		
		2	Trestles	6½		
		6	Water Works or Systems (construction)	5		
		23	Water Works or Systems (operation)	2		

Attest: (Signature)_____

§ 135. Form of monthly statement of city (c):

The following report is made to the Industrial Commission of the State of Washington certifying that the following is a complete list of all the departments of the city of_____, county of_____, having employés under the scope of the Wokmen's Compensation Act, together with a statement of the wages received by them for the month of_____

DEPARTMENT	Number of Employees	Total Payroll	Hazardous Payroll Under Act	CONTRIBUTION			Fund	Warrant Number
				Class	Rate	Amount		

Signature .....
Official Title .....

§ 136. Form of notice of assessment (d):

Date_____

To_____

_____

_____

DEMAND is hereby made for contribution on your payroll as required by Section 4 of the Workmen's Compensation Act (Chapter 74, Laws 1911), at the rate therein provided, into the Accident Fund of your Class:

For the month of_____ $_____
Less credits shown on department's records_____ $_____
Net amount to be forwarded_____ $_____

This sum of $_____now demanded must be received at Olympia thirty (30) days from the date above noted; otherwise you will be in default and subject to the penalties of the Act.

Remittance may be made by check, draft, or money order, payable to "Industrial Insurance Commission," and forwarded to Olympia, Washington.

This assessment is made upon an estimated monthly payroll based on the average payroll of your establishment, determined by the actual audit for October, November and December, of firms listed in 1911. Should your payroll at this time be larger or smaller than the estimate, an adjustment will be made after December 31st, 1912, and each establishment will be charged_____%

on as many twelfths of the entire year's payroll as there have been monthly calls.

The present assessment is made on account of the funds of the Class having been depleted below the point of reasonable safety by compensation awards made employés for accidents occurring in establishments of members of this class only.

INDUSTRIAL INSURANCE COMMISSION.

Attest: By----------

---------- Chairman.

Chief Auditor.

"Sec. 8. Defaulting Employers.

"If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the State as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the State for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the State may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department."

§ 137. Form of elective adoption of the provisions of act (e):

We, ----------, employer, and----------

----------employés of said employer, do hereby jointly and mutually agree to and do hereby elect and

accept each and all of the provisions of the Industrial Insurance Act of the State of Washington (Chapter 74, Session Laws of 1911), and do hereby subject ourselves irrevocably and completely to all of the provisions of said law, to all intents and purposes as if we had been originally included within its terms.

In Witness Whereof, We have hereunto set our hands, this ----------day of----------, 19--

----
Employer.

By----------

----------	----------
----------	----------
----------	----------
Employés of said employer.	Employés of said employer.

Witnessed by

The above election and adoption is hereby approved this------ day of------, 19----

INDUSTRIAL INSURANCE COMMISSION.

By----------
Chairman.

(ELECTIVE ADOPTION OF ACT) (Sec. 19, Chap. 74, Session Laws of 1911). "Any employer and his employés engaged in works not extra hazardous, may by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law."

§ 138. Form of demand for first quarterly payment required by act (f):

To the Industrial Insurance Commission, Dr.
Olympia, Washington.

As required by law, demand is hereby made upon you for the payment of $----------, the same representing your first or preliminary payment into the "Accident Fund" created by the Workmen's Compensation Law (Ch. 74, Session Laws of 1911), and is based upon data and payrolls for the months of ———, ——— and ———, ——, heretofore received from you by this office.

This first payment covers your ———, ——— and ——— (19——) payrolls. At the end of each year an adjustment will be made upon the basis of the actual payroll for the year, and your

contributions as required by the law will be based upon your actual yearly payroll.

This first quarterly payment will be sufficient until such time as the accidents occurring in your particular class have depleted the fund to such an extent that further payments are required.

Under Section 4 of the law, the first payment, herein and hereby demanded, must be received in this office on or before_____; otherwise, you will be in default and subject to the serious perils and penalties of Section 8, of the act relating to "defaulting employers."

This notice to you is a "demand for payment" as prescribed in Section 8 of said law. No further demand will be made upon you for this first quarterly payment, and prompt attention, therefore, is extremely important.

Yours very truly,
Industrial Insurance Commission.
By_____
Chairman.

Attest:

The amount herein demanded as the first quarterly payment is the true and correct amount under the law, and has been computed on the basis of data and payrolls of the above firm, heretofore submitted and on file in this office.

_____
Chief Auditor, Industrial Insurance Commission.

§ 139. Form of monthly statement (g):

The following report is made to the INDUSTRIAL INSURANCE COMMISSION of the State of Washington, showing names and payrolls of all contractors engaged in public work during the month of_____, for the City of_____, County of_____

CONTRACTOR'S NAME	Improvement Ordinance	Local Improvement District	CHARACTER OF WORK	Number of Employees	Total Hazardous Payroll	Class	Rate	Amount of Contribution	Fund	Warrant Number	REMARKS

Signed by _____
Official Title _____

§ 140. Alphabetical list of industries with rates and classification (h).—The following is an alphabetical list of the industries comprehended in the act, together with the rate of contributions that they bear, and the class in which they are placed:

	Class.	Pct.
Advertising signs	5	.035
Asphalt (manufacturing)	30	.025
Asphalt laying	8	.030
Automatic sprinklers (installation of)	6	.030
Barrel	29	.025
Basket	29	.025
Belts, putting up for machinery	6	.030
Blast furnaces (construction)	5	.040
Blast furnaces (operating)	18	.030
Blinds	29	.025
Boat building (with scaffolds)	9	.045
Boat rigging	9	.030
Boilers, covering	6	.030
Boilerworks	34	.020
Bottling works	37	.020
Box	29	.025
Brass (manufacturing)	34	.020
Breakwaters	3	.050
Breweries	37	.020
Brick (manufacturing)	35	.020
Brickettes (manufacturing)	36	.020
Brickwork (construction)	5	.050
Bridges (construction)	2	.065
Bridgework	27	.025
Brush (working in)	38	.015
Building hothouses	5	.020
Building material (not otherwise specified)	31	.025
Cable railways, with (rock work or blasting)	6	.050
Cable railways, without (rock work or blasting)	6	.035
Canal, other than irrigation or docks with or without blasting	3	.065
Canneries of fruit or vegetables	32	.025
Canneries of fish or meat products	33	.025
Carpenter work (not otherwise specified)	5	.035
Cement (manufacturing)	31	.025
Chimneys—metal, concrete or brick	5	.050
Cloth (working in)	38	.015
Coal mines	16	.030
Cold storage plants (refrigeration)	44	.020

	Class.	Pct.
Cooperage	29	.025
Concrete chimneys	5	.050
Concrete buildings	5	.050
Concrete laying in floors or foundations	5	.030
Concrete laying in street paving	8	.030
Condensed milk	40	.015
Conduits (placing wires in)	6	.030
Copper (manufacturing)	34	.020
Cordage (manufacturing)	38	.015
Creameries	40	.015
Creosoting works	47	.025
Dock excavations	3	.065
Door	29	.025
Dredges (making)	27	.025
Dredges (operation)	12	.050
Drilling wells	1	.020
Drydocks	12	.050
Dynamos (installing)	6	.030
Earthenware (manufacturing)	35	.020
Electric light and power plants or systems (construction)	6	.050
Electric light or power plants or systems (operating)	13	.040
Electric railways (with rock work or blasting)	6	.050
Electric railways (without rock work or blasting)	6	.035
Electric systems (not otherwise specified)	13	.020
Electrical apparatus (installing systems in buildings)	6	.020
Elevators, freight or passenger	5	.050
Electrotyping	41	.015
Engraving	41	.015
Excavations not otherwise specified	6	.040
Excelsior (manufacturing)	29	.020
Ferries	20	.030
Fertilizer	25	.025
Fire alarm (installing systems in buildings)	6	.020
Fire clay (manufacturing)	35	.020
Fire escapes	5	.065
Fireproofing of buildings	5	.050
Fireproof doors or shutters (erecting)	5	.050
Fireworks (manufacturing)	46	.050
Floating docks (construction)	9	.045
Floating docks (operation)	12	.050
Flouring mills	21	.020
Foodstuffs (working in)	39	.015
Foundries	34	.020
Fruits (working in)	39	.015
Galvanized iron or tin work	5	.050
Garbage works	25	.020

	Class.	Pct.
Gas works or systems (construction)	6	.050
Gas works (operation)	19	.030
Glass beveling	34	.025
Glass manufacturing	31	.020
Glass setting	5	.020
Grain elevators (not metal framed)	2	.050
Grain elevators (operation)	21	.020
Grease making	43	.015
Hardware	34	.020
House heating systems	6	.020
House moving	4	.065
House wrecking	4	.065
Ice, artificial	44	.020
Installations of steam boilers or engines	6	.030
Iron (manufacturing)	34	.020
Iron or steel frame structures or parts of structures	5	.080
Jetties	3	.050
Jewelry (making)	41	.015
Keg (manufacturing)	29	.025
Lath mills	10	.025
Lathing	5	.020
Lard (making)	43	.015
Laundries	22	.020
Lead articles (manufacturing)	34	.020
Leather (working in)	38	.015
Lithographing	41	.015
Locomotive making or repairing	28	.025
Logging	10	.025
Logging railroads	7	.050
Longshoring	42	.030
Machinery (installation of not otherwise specified)	6	.030
Machine shops (not otherwise specified)	34	.020
Mantel setting	5	.030
Marble work	5	.050
Marble work (setting)	5	.030
Marine railways	3	.050
Masts (with or without machinery)	10	.025
Metal ceiling work	5	.030
Metal smokestacks or chimneys	5	.050
Metal (stamping)	26	.045
Millwrighting	2	.030
Mines (other than coal)	17	.025
Oils (working in)	39	.015
Ornamental metal work in buildings	5	.035
Packing cases	29	.025
Packing houses	43	.025

	Class.	Pct.
Pail (manufacturing)	29	.025
Painting of buildings or structures	5	.030
Paper (working in)	38	.015
Paper-hanging	5	.020
Paper mills	24	.020
Peat fuel	36	.020
Photo-engraving	41	.015
Pile-driving	3	.050
Pile-treating works	47	.025
Placing wires in conduits	6	.030
Plastering	5	.020
Plumbing work (outside)	5	.050
Plumbing work (inside)	5	.020
Porcelain ware	35	.020
Pottery (manufacturing)	35	.020
Powder works (manufacturing)	46	.100
Power plants (electric) or systems (operation)	13	.040
Power plants (steam) or systems (operation)	13	.025
Printing	41	.015
Pulp mills	24	.020
Quarries	17	.040
Railroad car making or repairing	28	.025
Road making (without blasting)	8	.020
Road making (with blasting)	8	.050
Rolling mills	18	.030
Roof work	5	.050
Rubber (working in)	38	.015
Safe-moving	4	.050
Sash	29	.025
Saw mills	10	.025
Sewers	1	.065
Shaft-sinking	1	.060
Shingle mills	10	.025
Ship building (with scaffolds)	9	.045
Ship rigging	9	.030
Ship wrighting	9	.030
Slate work	5	.050
Smelters (operation)	18	.030
Soap (making)	43	.015
Spars (with or without machinery)	10	.025
Staves	29	.025
Steamboats	20	.030
Steam heat, plants or systems (operating)	13	.025
Steam heating plants (construction)	6	.040
Steam pipes or boilers (covering)	6	.030
Steam railroads	7	.05[illegible]

	Class.
Steam shovels (making)	27
Steel (manufacturing)	34
Steel frame structures	5
Steeples	2
Stevedoring	42
Stockyards	43
Stone (with or without machinery)	31
Stone crushing	17
Stone setting	5
Stone work	5
Street grading (or other)	8
Street railways	14
Sub-aqueous works	3
Tallow (making)	43
Tanks (construction)	2
Tanks (manufacturing)	27
Tanneries	43
Telegraph systems (construction)	6
Telegraph systems (operating)	15
Telephone systems (construction)	6
Telephone systems (operating)	15
Terra cotta (manufacturing)	35
Textile (working in)	38
Textile (not otherwise specified)	38
Theater stage employes	45
Tile (manufacturing)	35
Tile-setting	5
Tin (stamping)	26
Towers (not metal framed)	2
Trestles	2
Tub (manufacturing)	29
Tugs	20
Tunnels	1
Vegetables (working in)	39
Veneer	29
Ventilating systems (house)	6
Water towers (construction)	2
Water towers (manufacturing)	27
Water works or systems (construction)	6
Water works (operation)	23
Wharf (operation)	42
Wind mills (not metal framed)	2
Wood (kindling)	29
Wood fibre ware	29
Wood ware	29
Wood working (not otherwise specified)	29

	Class.	Pct.
Wooden stair building	5	.020
Wool (working in)	38	.015
Zinc (manufacturing)	34	.020

Chapter 74, Section 17, Laws of 1911. Public and Contract Work—Whenever the state, county or any municipal corporation shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county or municipality. If said work is being done by contract, the payroll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the state for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment.

§ 141. Form of instructions to cities, counties, school, port, water way, drainage, or other municipal corporations (i):

1. All contractors doing public work in a given month to be listed.
2. Payrolls of contractors engaged in occupation named in section 4 of the Act must be filed monthly with the auditor, contractor, or clerk.
3. On the basis of such payrolls, officers shall enter the rate, class and contribution on each department of his work opposite each contractor's name on the within blank.
4. Accompany this report with checks or warrants payable to "Industrial Insurance Commission."
5. The Commission or its district assistant, or a traveling auditor, will audit contractors' payrolls so filed from time to time without notice; or, on request each month prior to the within report being forwarded to Olympia.
6. Segregate only the main divisions of a payroll into class, disregard incidental occupations—classify such items with the same work rendering odd jobs necessary.

§ 142. Form of letter of instructions to the employers and employés (j):

Gentlemen:

Acknowledging your request of recent date for supply of blanks, we take pleasure in enclosing the same herewith;

Form (k) must be made out by the employer in every case of accident coming under the law.

Form (l) must be made out by the employé or by his direction and with the assistance of the attending physician.

Form (m) must be made out by the attending physician in case of injury and Form (q) by the attending physician in case of death. Form (q) should be acknowledged before a notary.

(Unless the injured employé is attended by a regularly licensed physician, claim will not be considered.)

Form (r) must be made out by the undertaker in case of death and form (s) by the dependents or family of deceased in case of death. Both of these forms should be acknowledged before a notary.

Whenever possible, Form (o) should be signed by witnesses who saw the accident and forwarded promptly to this office.

Form (n) should be made out by the attending physician or surgeon as soon as the injured employé is discharged from treatment.

Please keep a supply of these forms on hand. Additional supplies will be forwarded promptly on request or may be procured at the following branch offices of the Commission:

Seattle, 524 Haight Building;
Tacoma, 506 Bank of California Building;
Bellingham, 346 First National Bank Building;
Spokane, 410 Fernwell Building;
Vancouver, 805 Washington Street;
Aberdeen, 536 Finch Building.

Unless the injury causes the loss of over one day's time or results in a disability that impairs the earning capacity 5 per cent., it cannot be considered by the Commission.

Address all communications to—

THE INDUSTRIAL INSURANCE COMMISSION,
Olympia, Washington.

§ 143. Form of employer's report of accident to employe with chart (k):

INSTRUCTIONS—Unless accident represents 5 per cent. loss of time or 5 per cent. disability, disregard.

Fill out and return blank to Commission within 5 days after accident.

Fill in all blanks with ink, using pen or typewriter.

Employer, Place, and Time.

Employer's name_____Office address—Street and No._____
City or village_____Business, goods produced, work done, or

kind of trade or transportation_____

_____

Location of plant or place of work where accident occurred—Street and No._____City or village_____Date on which accident occurred_____Hour of day_____State whether accident happened on the premises or at the plant, or in course of employment, or away from the plant of employer; if away from plant state where and by whom injured_____

_____

Who was in charge of work at place where accident occurred?_____

The Injured Person.

Name_____Address_____ Sex_____Age_____

Speak English?_____If not, what language?_____

Occupation when injured?_____Was it injured person's regular work?_____Engaged in construction, operation or repair?

_____Length of experience in said occupation_____

Piece or time worker?_____Wages or average earnings per day _____What statement, if any, has injured person made?

_____

The Cause.

Name of machine, tool or appliance in connection with which accident occurred?_____Hand or mechanical feed?_____

Part on which accident occurred?_____Was it in any way out of order or ill-suited to the work?_____Were special instructions given injured person in relation to its use?_____Was accident due to want of care of injured person?_____Was accident due to negligence on part of any person, if so, how?_____

_____

In whose service was person who caused the accident?_____

Was accident caused by removal of any safeguard?_____If so, was it removed by the injured workman, or any of his fellow workmen, or by the superintendent or foreman?_____

_____

Names and addresses of witnesses_____

_____

_____

Describe in full how accident happened_____

_____

How could accident have been prevented_____

_____

The Injury.

State fully nature and extent of injury—(Mark on attached chart location of injury)*_____

_____

_____

_____

Medical Attendance.

Attending physician, or hospital where sent?_____

Name_____Address_____Probable length of disability—give your own opinion_____

Dependents.

Is injured workman married or single?_____

If single, has injured party any dependents?_____

If so, give names and address of each_____

_____

_____

_____

If married, give names and present address of husband or wife and children of injured workman_____

_____

_____

Number of children_____Ages of children_____Number of other dependents_____Ages of other dependents_____

Are father and mother living?_____If so, give address of each

_____

_____

(Signed)_____

Official title or position_____

For_____

*See pp. 379, 380 for charts.

§ 144. Form of workman's claim for compensation (1):

(Fill in all blanks with ink or indelible Pencil.)

Employer, Place, and Time.

Employer's name _____
Office address—Street and No. _____
What kind of business? _____
Location of plant where accident occurred—Street and No. _____
City or village _____
Date on which accident occurred_____Hour of day_____
Did accident happen on employer's premises or plant?_____
In course of workman's proper employment?_____
Or away from employer's premises or plant?_____
If away from employer's premises or plant, state where and by whom injured? _____

The Injured Person.

Name in full _____
Address—(Street and No.) _____
Sex _____ Age _____ Speak English? _____
If not, what language?_____
Occupation when injured?_____ Was this your regular work?_____
Length of experience, here and elsewhere, in this occupation?_____
Piece or time worker?_____Wages, or average earnings per day?____
Place of birth?_____
Were you in a good state of health at the time of this accident?_____
Have you ever had a serious sickness?_____ If so, what was it, how long did it last and who was your attending physician?____
Have you ever received any other injury?_____
If so, when, where, and what was its nature?_____
Have you any other source of income, such as lodge benefits, accident insurance, etc.? _____ If so, how much and from what source derived?_____

The Cause.

Name of machine, tool or appliance in connection with which accident occurred? _____
Hand or mechanical feed?_____
Part on which accident occurred?_____
Was accident caused by any fault of machines or appliances you were using? _____
Were all safeguards in their places at the time you were hurt?_____

If any safeguard was removed, did you remove it, or was it removed by any of your fellow workmen or any superintendent or foreman? _____

Describe in full how accident happened_____

The Injury.

State fully nature and extent of injury_____

Names and addresses of witnesses_____

Medical Attendance.

Attending physician or hospital where sent_____

Name _____ Address_____

Dependents.

If married, give full name and address of wife or husband_____

Are you living as husband and wife?_____

If not, are you divorced?_____

If divorced, when and where?_____

If separated, how long have you lived apart?_____

Has any of your wages gone to the support of your wife or husband during this time? _____

How much per week?_____ Have you any children under the age of sixteen? _____ If so, give name, age and address of each _____

If not in your care, give name and address of people with whom they live _____

Have you any of the following dependents: invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident, were dependent, in whole or in part, for their support upon your earnings? _____

If you have any of the above named dependents, give their names and addresses, together with their ages, and what support they were receiving from you_____

I, the undersigned, do hereby make application to the Industrial Insurance Commission of Washington for compensation for injuries received as aforesaid. I hereby state that the above facts with reference to myself and my injury are true and correct.

Signed this _____ day of _____, 191__, at_____

County of _____, State of Washington.

(Sign full name here)_____

Signed and witnessed before:

_____

_____

§ 145. Form of instructions to injured workman (l):

This form must be made out by every workman, injured in a dangerous occupation, who desires compensation from the state.

Unless the injury causes the loss of over one day's time or results in a disability that impairs the earning capacity 5 per cent., it cannot be considered by the Commission.

Do not hire a lawyer until you have asked the help of your employer, your attending physician or some member of the Commission's staff. If you are entitled to compensation the services of a lawyer are not necessary and you will receive your money without a lawsuit or other expense.

It is the duty of your attending physician to assist you in making out your claim. See section 12, paragraph (a) of the Workmen's Compensation Act (Chap. 74, Laws of 1911). "Where a workman is entitled to compensation under this act he shall file with the department his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman."

Call any doctor you like. The Commission has nothing to do with doctor's bills or hospital charges.

Get blanks from your employer, from the office of the Commission in Olympia, or from any of its branch offices as follows:

Seattle, 524 Haight Building;

Tacoma, 506 Bank of California Building;

Bellingham, 346 First National Bank Building;

Spokane, 410 Fernwell Building.

Send claim to nearest local office or directly to Olympia.

If possible, get a report of witnesses who saw the accident—Form (o). This blank can be secured at above offices and may save trouble later.

In case of death, relatives or dependents must make the claim and blanks will be furnished them when requested.

Fill out the blanks fully and carefully. Action upon your claim will be delayed unless reports are made out promptly and correctly.

Make out your claim AT ONCE. Prompt action will assist you in getting early compensation.

If required, you must allow the Commission's physician to examine you, but this examination will not cost you any money. It is paid for by the state. Don't refuse to be examined or your claim will not be considered.

GENERAL INSTRUCTIONS.

Form (k) must be made out by the employer in every case of accident coming under the law.

Form (l) must be made out by the employé or by his direction and with the assistance of the attending physician.

Form (m) must be made out by the attending physician in case of injury and Form (q) by the attending physician in case of death.

Form (r) must be made out by the undertaker in case of death and Form (s) by the dependents or family of deceased in case of death.

Whenever possible, Form (o) should be signed by witnesses who saw the accident and forwarded to this office.

Form (n) must be made out by the attending physician or surgeon as soon as the injured employé is discharged from treatment.

Keep blanks on hand or ask your employer to keep them on hand for you. They don't cost him anything, and the sooner you make a proper claim, the sooner it will be settled.

For copies of "Rules and Regulations" and placards for posting, please apply to the Commission or to its branch offices in Seattle, Tacoma, Spokane, Bellingham, Aberdeen or Vancouver.

CAUTION! WARNING!!

Don't take off any safeguard or protective device. If you do, and then get hurt, it decreases or lessens your compensation 10 per cent. (See section 9 of the law.)

Don't remove any safeguard yourself and don't let anyone else remove it. If the superintendent, foreman or any other person removes it, report the fact to the Commission.

Don't take any chances with machinery. If you injure yourself intentionally you are not entitled to any compensation.

Don't hesitate to lend a hand when anyone is hurt. It is to your interest and to your employer's interest to decrease or lessen the number of accidents and deaths and keep as many workmen at work as possible.

The state will give you reasonable compensation in case of injury. If you do not think it is sufficient, remember that it is much better than lawsuits and delays under the old system.

§ 146. Form of report of attending physician with charts (m):

(Fill in all blanks with ink, using pen or typewriter.)

Employer, Place, and Time.

Employer's name_____Office address—Street and No._____
City or village_____What kind of business?_____Loca-

tion of plant where accident occurred—Street and No._____
City or village_____Date_____Hour_____M

The Injured Person.

Name in full_____City or town_____Address—Street and No._____Occupation_____Age_____Sex _____Married or single_____
Does patient pay hospital dues?_____Is patient left or right-handed?_____Has the patient been maimed or crippled by any previous injury?_____If so, what?_____
_____

The Injury.

Give description, stating the parts injured and supposed manner of infliction, marking upon the chart upon the back of this report, the site of injury_____
_____
_____
_____
Where treated_____Hour of treatment_____State who rendered first treatment and what was done_____
_____
_____
State name and address of consultant or assistant_____
_____
_____
Give description of treatment_____
_____
_____
What was done with patient?_____Are the symptoms from which he is suffering due to the aforesaid accident, or are they traceable to any previous accident, or other cause, and if so, what?_____
_____

Medical Attendance.

Name of attending physician_____Office address—Street and No._____City or town_____

Disability.

Is the injury of so serious a nature as to wholly disable and prevent him from attending to any and all kinds of duties pertaining to his present occupation, or any other occupation?_____
If not wholly disabled, to what extent disabled?_____
_____
_____
Is he confined to the house?_____If not confined to the house, why do you consider that he is unable to attend to any part of his duties? _____
_____
State opinion as to length of time patient will be disabled_____
In your opinion will any permanent disability follow?_____
_____
_____
State any additional information which you deem of interest as to extent of disability, impairment of earning capacity, etc. _____
_____
_____
_____
_____

(This report must contain account of all injuries no matter how trivial.)

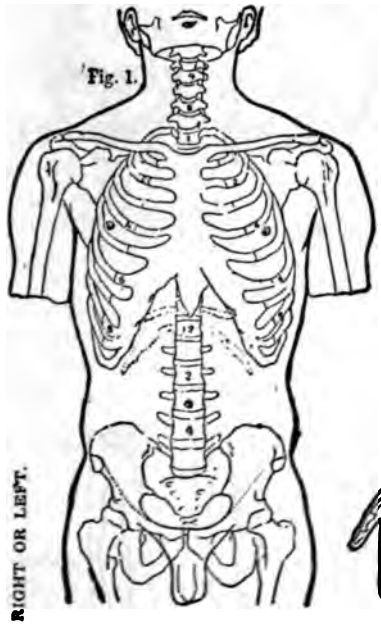
I hereby certify that I am the attending physician of the injured person above mentioned; that I have set forth in the foregoing report all the facts in the case and that the statements contained therein are true and correct.

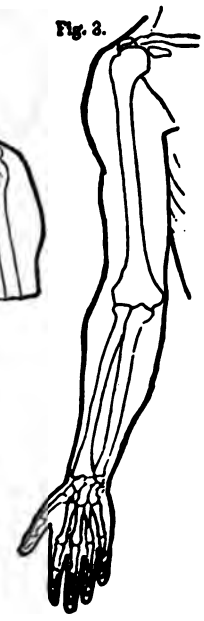
(Signed)_____
Attending Physician.

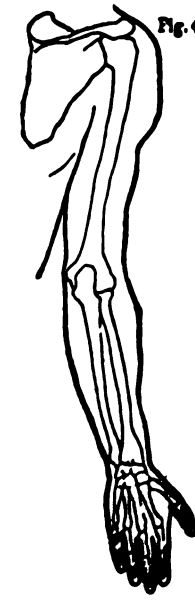
Date signed_____

(This form should be made out and forwarded to the office of the Commission in Olympia as soon as surgeon has made such careful examination as will enable him to make an intelligent report of the case. No fee is paid for making out this blank, but the Commission respectfully urges the co-operation of attending physicians in getting the real facts of each case before it.

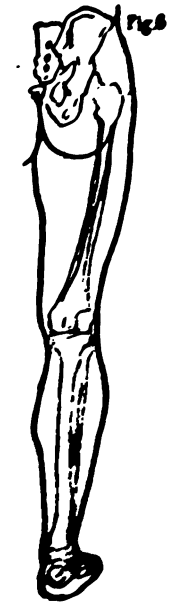
N. B.—Your patient cannot receive any Compensation from the State until this form is received and passed upon by the Chief Medical Advisor of the Commission.)







WHERE CHART SHOWS ONE SIDE ONLY INDICATE RIGHT OR LEFT.



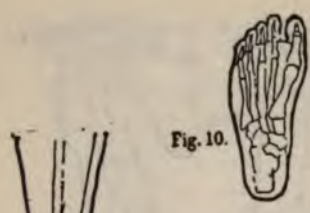


Fig. 10.

Fig. 7.

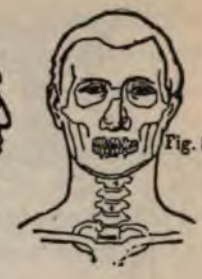
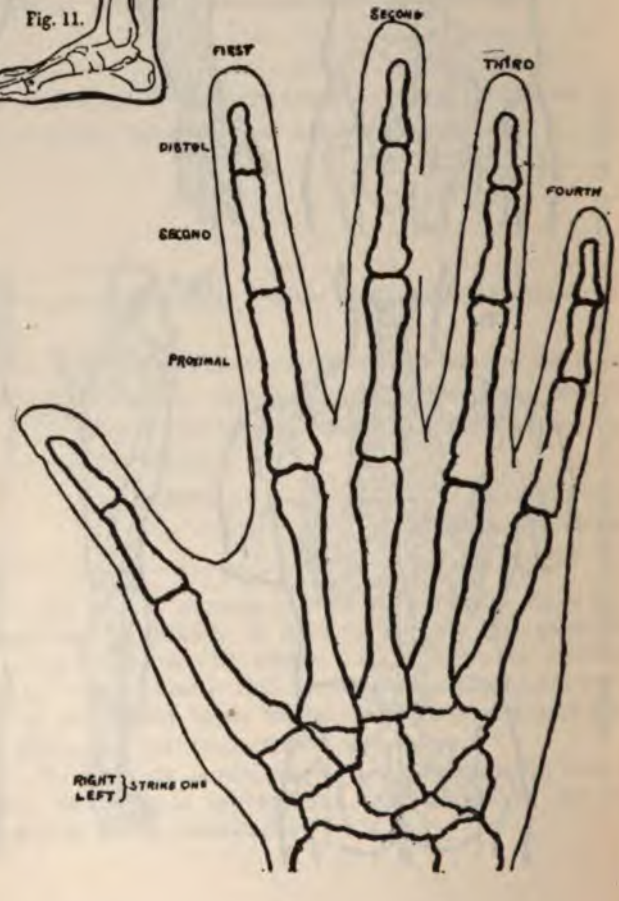


Fig. 8

Fig. 9.

Fig. 11.



WHERE CHART SHOWS ONE SIDE ONLY INDICATE RIGHT OR LEFT.

§ 147. Form of surgical discharge report (n):

_____, Wash.
_____, 191___

I hereby notify you that_____who came under my care at _____on the_____day of_____, 191____, having been injured at the plant or premises of_____at_____ on the_____day of_____, 191____, was discharged from treatment, the_____day of_____191.

1. Developments which have retarded recovery_____
_____
2. What operation, if any, performed since original report?_____
_____
3. His condition is_____
4. State whether in your opinion any permanent disability will follow_____If so, what?_____
_____
5. The time of treatment was_____days. 6. Was in hospital_____days.
7. Will be able to resume work on or about the_____day of _____, 191___
8. If patient has already resumed work, for how many days was he unable to work?_____
9. Inclination of patient to follow surgeon's directions_____
_____
10. *For statistical purposes only, please give the following data:

Cost of medical and surgical treatment_____ $_____
Cost of medicine, medical and surgical supplies__ $_____
Cost of crutches and apparatus_____ $_____
Hospital charges _____ $_____
Ambulance charges _____ $_____
Cost of nurse_____ $_____

*Note: The above information will be held strictly confidential, and only used in the form of general tables, no individual figures being shown.

_____, Surgeon
at _____

☞This report must be made out and forwarded to Olympia as soon as patient is discharged from professional care.

§ 148. Form of report of witnesses (o):

(Fill in all blanks with ink or indelible pencil.)

Employer, Place, and Time.

Employer's name_____Location of plant where accident occurred—Street and No_____City or village_____ Date on which accident occurred_____Hour of day___

The Injured Person.

Name in full_____Address—Street and No._____Occupation when injured?_____

The Cause.

Name of machine, tool or appliance in connection with which accident occurred? _____
Was the machine or appliance in good repair?_____
Had the injured person been properly instructed in its use?_____
Were all safeguards in place when accident happened?_____
Was accident due to absence of safeguard?_____
If so, who removed safeguard?_____
Was the place where accident occurred well lighted?_____
Natural or artificial light?_____
Whose fault was cause of accident?_____
Where was the superintendent or foreman at the time of accident?
_____
What statement did injured person make at the time of accident?
_____
_____
Was injured person in any way careless or negligent in his work?
_____
Was his eyesight or hearing defective?_____
Describe in full how accident happened_____
_____
_____
_____
How could accident have been prevented?_____

The Injury.

State fully nature and extent of injury_____
_____
_____

Dependents.

If married, give full name and address of wife or husband_____
_____
Has he any children under the age of sixteen?_____
If so, how many?_____
If single, what persons are dependent upon the injured person's earnings? _____
_____

I hereby certify that I witnessed the accident described here[illegible]

with and declare that the above is a true and correct account of the same as I saw it.

(Sign Here) 1_____Witness.
2_____Witness.
3_____Witness.

Note: Do not try to answer questions by hearsay. Answer only according to your personal, first-hand knowledge.

FORM OF INSTRUCTIONS TO WITNESSES.

This form should be made out in every case where there are witnesses to an accident, for which compensation is desired. It is to the interest of both employer and employé to have a report made by witnesses in every case.

The making out of this form is not compulsory, and employers cannot compel their employés to sign it, but the Commission requests that both employers and employés co-operate for the purpose of getting at the exact facts.

The statements appearing on this form do not have to be acknowledged or sworn to. They can be made out by anyone and signed by the witness at any time or place.

The advantage of this form to the workman or his family making claim is that the report of witnesses makes the claim file complete and is likely to hasten its settlement.

The advantage to the employer is that the report of witnesses constitutes a cross-check on the claim and operates to prevent fraud or collusion.

GENERAL INSTRUCTIONS.

Form (k) must be made out by the employer in every case of accident coming under the law.

Form (l) must be made out by the employé or by his direction and with the assistance of the attending physician.

Form (m) must be made out by the attending physician in case of injury and Form (q) by the attending physician in case of death.

(Unless the injured employé is attended by a regularly licensed physician, claim will not be considered.)

Form (r) must be made out by the undertaker in case of death and Form (s) by the dependents or family of deceased in case of death.

Whenever possible, Form (o) should be signed by witnesses who saw the accident and forwarded promptly.

Form (n) must be made out by the attending physician or surgeon as soon as the injured employé is discharged from treatment.

Keep blanks on hand or ask your employer to keep them on hand for you. They don't cost him anything, and the sooner you make a proper claim, the sooner it will be settled.

For copies of "Rules and Regulations" and placards for posting, please apply to the Commission or to any of its branch offices as follows:

Seattle, 524 Haight Building;
Tacoma, 506 Bank of California Building;
Bellingham, 346 First National Bank Building;
Spokane, 410 Fernwell Building;
Vancouver, 805 Washington Street;
Aberdeen, 536 Finch Building.

Unless the injury causes the loss of over one day's time or results in a disability that impairs the earning capacity 5 per cent., it cannot be considered by the Commission.

§ 149. Form of surgeon's special report with charts (p):

(Fill in all blanks with ink, using pen or typewriter.)

Name of patient_____Address_____Nativity_____
Age_____Married, Single, Widowed. Where is the patient?
_____Date of accident_____Hour_____M. Place of accident _____

1. Give description of injury, stating supposed manner of infliction, etc.	_____
2. Give description of the treatment being employed in this case in full.	_____
3. What operations have been performed and with what results?	_____
4. Name and address of surgeon who operated, and assistant.	_____
5. Has repair been delayed from any cause? If so, what?	_____
6. Was there any previous disability or deformity? If so, what?	_____
7. Is there evidence of luetic, gonorrheal, or tubercular infection or alcoholism? If so, what?	_____

8. Temperament of patient, any evidence of hysteria, neurasthenia or hypochondria. If so, what? _____

9. Any occupational disease? _____

10. Temporary disability. _____

11. What is the PERMANENT disability of this case, if any? Mark on chart EXACT location of same.* _____

12. Inclination of patient to follow surgeon's directions, etc. Give a summary of the case as you see it. _____

13. Peculiar conditions and your findings. _____

Signature of Surgeon_____, M. D.

Date_____ Address_____Washington.

§ 150. Form of proof of death by physician (q):

(To be Filled Out by the Attending Physician or Deceased.)

(Fill in all blanks with ink, using pen or typewriter.)

1. Name of the deceased in full_____
2. (a) How long have you known the deceased?_____
   (b) How long have you been medical adviser of deceased?_____
3. (a) Age at death_____years. (b) Married or single_____
   (c) Names and ages of children under 16_____
4. Place of death (Give street number, city or town, and state): Street_____City or town_____State_____
5. (a) Occupation at the time of death_____
   (b) Nationality _____
6. Date of your first visit or prescription_____
7. Date of your last visit_____
8. Date of death_____
9. (a) State the remote cause of death_____
   (b) State explicitly the immediate cause of death_____
10. Did you see the body of the deceased and did you identify it as that of the injured workman at_____ while in the employ of_____, of_____?

*See pp. 379, 380 for charts.

11. Was there a coroner's inquest held?_____
12. Was deceased attended by any other physician during last illness? If so, state his name and address_____
_____
13. Was health of deceased impaired by intemperance or any pernicious habit?_____ If so, what?_____
_____
14. Have you any interest in this claim?_____
15. Have you stated all the material facts connected in any way with this death?_____
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?_____

Dated this_____day of_____, 191____

_____
Attending Physician.

STATE OF_____ } ss: OATH.
County of_____ }

On this_____ day of_____, A. D. 191___, personally appeared before me, the above named_____ physician in regular standing, and made oath that the answers by him above made and subscribed are true.

_____
Notary Public or Justice of the Peace.

(Unless officer taking acknowledgment has OFFICIAL SEAL, certificate of appointment will be required.)

§ 151. Form of proof of death from undertaker (r)

(Fill in all blanks with ink, using pen or typewriter.)

STATE OF_____, County of_____, ss:

_____, of _____, says, that he is a duly licensed undertaker of_____at
(City or town)
Street Number_____; that as such he was required on the _____ day of _____, 191__, to prepare the dead body of_____for burial; that he placed said body in a coffin and placed said coffin, containing the said body, in a_____ in _____cemetery. That he was directed to conduct such burial by_____ who authorized the following items of expense:

Moving remains to morgue.
Washing, shaving and dressing.
Embalming.
Telephone.
Underclothes and hose.

Slippers.
Burial Robe.
Funeral Notices.
Cemetery lot.
Opening and filling grave.
Lining grave.
Outside box.
Grave vault.
Taking box or vault to cemetery.
Casket coffin.
Hearse.
Personal service.
Use of gloves.
Use of double rigs.
Use of single rigs.
Funeral service by.
Remains to boat.
Wagon deliveries.

Total_____$

That I was informed said bill would be paid by_____

That no part of said bill of expense so authorized for said burial has been paid, except—

$_____ by _____
$_____ by _____
$_____ by _____

Subscribed and sworn to before me, this_____day of _____, A. D. 191____

_____
Notary Public.

(Note: Unless officer taking acknowledgement has OFFICIAL SEAL, certificate of appointment will be required.)

Certificate of person who made funeral arrangements will be required below unless itemized bill of undertaker endorsed "correct" by such person, is attached.

CERTIFICATE OF PERSON AUTHORIZING BURIAL.

_____hereby certify that I have read the foregoing affidavit of _____undertaker_____; that I authorized the items of expense therein amounting to $_____, as the_____ of deceased workman.

Signed_____

(Note: The entire amount allowed for burial under the Workmen's Compensation Act can not exceed $75.00.)

MEMORANDUM BY CORONER, UNDERTAKER OR FRIENDS.

(To be furnished in case no relatives or dependents are present at burial.)

Address of Relatives or Dependents of Deceased:

	Name.	Relationship.	Address.
1.	----------	----------	----------
2..	----------	----------	----------
3.	----------	----------	----------
4.	----------	----------	----------

§ 152. Form of dependent's claim for compensation. (s)

What is your full name?----------
State your residence. Street---------- Town----------
County---------- State----------
How old are you? (Give age at last birthday)----------years.
Date of birth---------- In what capacity, or by what right, do you make the claim?----------
How long have you known the deceased?----------
State the full name of the deceased----------
Give the following particulars relating to the deceased:
Where and when born? Place----------
--------County --------Year --------Month --------Day--------
(Note: It is important that the town, city, etc., should be mentioned.)
If married, when and where?----------
Where did deceased reside at time of death. Street and place ----------
Where and when did deceased die? Street and place----------
Date----------
In what occupation was the deceased working when the injuries occurred that caused death?----------
How long prior to death was deceased confined to the house? ----------
What was the cause of death?----------
Had the deceased any source of income beside his wages, if so, what?----------
Did the deceased carry accident, life or lodge insurance or benefits; if so, what amount and in what companies or lodges? ----------
What ailment, disease, illness, weakness, infirmity, disability, or injury has deceased ever had? State facts fully----------
State the name and residence of every physician who has prescribed for or attended the deceased during the past two years----------

§ 153. Affidavit to foregoing form.

STATE OF WASHINGTON, County of_____, ss:

(Strike out paragraphs following which are contrary to fact:)

Being first duly sworn, I the undersigned, depose and say:

That I am a legal guardian of*_____ child / children

(1) That I am a*_____ of _____ Deceased Workman, whose death resulted from injury occurring on the_____day of_____, 19___, in course of hazardous employment at_____, Washington, as heretofore reported to the Industrial Insurance Commission:

(2) That I am and have remained unmarried since said death;

(3) That said Deceased Workman left surviving him the following children not more than sixteen (16) years of age, and whose birth dates are as follows to-wit:

Name.	Date of Birth.	Relationship to Deceased Workman.
_____	_____	_____
_____	_____	_____

(4) That said Deceased Workman left surviving him no widow —widower—but_____child—children—under sixteen years of age named in paragraph (3) hereof, who are in the lawful custody of _____ as _____ thereof;

(5) That said Deceased Workman left surviving him no widow —widower or child under the age of 16 years, but left_____ dependent__, necessarily receiving support in whole or in part from his earnings, and who actually received during the twelve (12) months next preceding the injury the average monthly support stated opposite their name__, viz.:

Name.	Birth Date.	Actual Necessity for Dependency.	Average Monthly Support.
_____	_____	_____	$_____
_____	_____	_____	$_____

(6) That the actual and necessary support given the dependents named in paragraph (5) "during the twelve months next preceding the occurrence of the injury" was monthly as follows: (1) $_____in_____; (2) $_____in_____; (3) $_____in_____; (4) $_____in_____; (5) $_____in_____; (6) $_____in_____; (7) $_____in_____; (8) $_____in_____; (9) $_____in_____; (10) $_____in_____; (11) $_____in_____; (12) $_____in_____

(7) That said Deceased Workman was under the age of twenty-

*Insert the correct term; as widow, widower, legal dependent, guardian of children, etc.

one (21) years, birth date having been_____,
and left surviving him_____parents, as follows:

Father_____ Post Office Address_____
Mother_____ Post Office Address_____

(8) That paragraphs numbered _____ were intentionally stricken from the foregoing Affidavit Form, and that the facts stated in the remaining portions thereof are true.

Dated this_____ day of_____, A. D. 191___

(Sign here)_____

Claimant.

STATE OF_____, County of_____, ss:

OATH.

On this _____ day of _____, A. D. 191___, personally appeared before me, the above named_____ and made oath that the anwers by him, her, or them above made and subscribed are true, and that he, she, or they has or have concealed no fact from the Industrial Insurance Commission.

_____

Notary Public or Justice of the Peace.

(Unless officer taking acknowledgment has OFFICIAL SEAL, certificate of appointment will be required.)

§ 154. Form of affidavit of claimant for compensation—Survivors of deceased workmen. (t)

(Strike out portions contrary to fact.)

STATE OF WASHINGTON, _____, County, ss:

Claim No. _____ Class_____ Year_____ Month ending_____

Being first duly sworn, I the undersigned, depose and say:

(1) That I am a*_____ of _____ Deceased Workman, whose death resulted from injury occurring on the _____ day of _____, 19__, in course of hazardous employment at _____, Washington, as heretofore reported to the Industrial Insurance Commission;

(2) That I am and have remained unmarried since said death;

(3) That said Deceased Workman left surviving him the following children not more that sixteen (16) years of age, and whose birth dates are as follows, to-wit:

Name.	Date of Birth.	Relationship to Deceased Workman.
_____	_____	_____
_____	_____	_____

(4) That said Deceased Workman left surviving him no widow —widower—but_____child—children—under sixteen years of

*Insert the correct term; as widow, widower, legal dependent, guardian of children, etc.

age named in paragraph (3) hereof, who are in the lawful custody of _____ as _____thereof;

(5) That said Deceased Workman left surviving him no widow —widower or child under the age of 16 years, but left_____ dependent__, necessarily receiving support in whole or in part from his earnings, and who actually received during the twelve (12) months next preceding the injury the average monthly support stated opposite their name__, viz.:

Name.	Birth Date.	Actual Necessity for Dependency.	Average Monthly Support.
_____	_____	_____	$_____
_____	_____	_____	$_____

(6) That said Deceased Workman was under the age of twenty-one (21) years, birth date having been_____ and left surviving him_____parents, as follows:

Father_____ Post Office Address_____

Mother_____ Post Office Address_____

(7) That paragraphs numbered _____ were intentionally stricken from the foregoing Affidavit Form, and that the facts stated in the remaining portions thereof are true.

(Sign here)_____

(Write name clearly.)

Subscribed and sworn to before me this____ day of_____, 19__

(SEAL) _____

_____

(Title of Office.)

§ 155. Form of summary and award. (u)

Employer, Place, and Time.

Firm name_____Firm No._____

Location of plant_____Payroll filed_____

Demand sent_____Paid_____

The Injured Person.

Employé_____Age, if not 21_____ | Form 36 Sent

Address last given_____ | Date_____

_____ | Date_____

_____ | Date_____

_____ | Date_____

_____ | Date_____

_____ | Date_____

The Injury.

Date of accident_____Character_____

_____

Time loss, actual:_____days, at $_____; Total, $_____

Maximum monthly allowance, $_____

Reduced by 60 per cent. rule to $_____

Name	Age	Expectancy	Relationship	Date Dependency Expires	Amount of Pension	Amount of Reserve
1.						
2.						
3.						
4.						
5.						
6.						

Award.

I. Partial Payment:

Monthly allowance ending*_____;

continuing total disability_____$_____

Advance on account, lump sum, pending investigation___$_____

II. Lump Sum Settlement:

Time loss, temporary total disability_____$_____

Permanent partial disability_____$_____$_____

III. Monthly Pensions:*

Permanent total disability, beginning_____ _____$_____

To dependents of deceased workman, beginning__ _____$_____

IV. Burial Expenses allowed to_____ _____$_____

V. Reserve "for the case"_____ _____$_____

Computed _____ Payment ordered, date_____

Certified correct _____ _____

Claim Agent. Chairman.

Approved _____ _____

Chief Physician. Commissioner.

*Reviewed and further payment ordered for:

_____

Commissioner.

Balance to					
Month to					
Amounts					
Initials					
Date					
Balance to					
Month to					
Amounts					
Initials					
Date					

Voucher No._____ Warrant No. _____

Remarks: _____

_____

_____

_____

§ 156. Form of partial payment voucher—Permanent partial disability—Full payment—Total temporary disability—Partial payment. (v)

Month_____
Year _____
Claim No _____
Class_____ To_____, Dr.
Firm No_____ (Postoffice address)_____

Compensation under Chapter 74, Session Laws 1911, in PARTIAL PAYMENT of claim of above claimant for _____ $_____

_____

occurring on the_____day of_____, 191__, at_ _____, Washington, as allowed and approved by the findings and order of the Industrial Insurance Commission on record, file (page_____) in the Commission's office, this PARTIAL PAYMENT being computed under rules established in Section 5, Subdivision (d) of said Statute. _____$_____

Also full payment for the permanent partial disability sustained—Sub-division (f) _____ $_____

STATE OF WASHINGTON, County of_____, ss:

Received at Olympia, Washington,_____, 191___, of the STATE AUDITOR, warrant on the State Treasurer, No._____, for the sum of*_____Dollars,
(Do not fill in this amount)
*$_____, and I, the undersigned, do hereby
(Leave this space blank)
certify that the injury above mentioned actually happened to me, as heretofore reported to the Industrial Insurance Commission; that I hereby acknowledge receipt of the amount above mentioned as PARTIAL COMPENSATION for said injury.

(Sign Here)_____
(Write Name Clearly) Payee.

Witnesses to Signature: Date of Signature_____
_____ Postoffice address_____
_____ Postoffice address_____

*Leave amount blank, to be filled by Auditor.

STATE OF WASHINGTON, County of_____, ss:

We, the Industrial Insurance Commission of the State of Washington, hereby certify that the claim for compensation above mentioned has been investigated, approved and the above partial payment regularly allowed by the Commission in the sum of_____ _____ Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

_____
Chairman.

_____
Attest: Commissioner.

_____ _____
Secretary. Commissioner.

§ 157. Form of partial payment voucher—Total temporary disability—Monthly allowance. (vv)

STATE OF WASHINGTON.

Month ending_____

Year_____ To_____Dr.

Claim No_____

Class _____ (Postoffice address)_____

Compensation under Chapter 74, Session Laws 1911, in PARTIAL PAYMENT of claim of above _____ claimant for _____

_____

occurring on the_____day of_____, 191__, at_____, Washington, as allowed and approved by the findings and order of the Industrial Insurance Commission on record, file (page_____) in the Commission's office, this PARTIAL PAYMENT being computed under rules established in Section 5, Subdivision (d) of said Statute _____

STATE OF WASHINGTON, County of_____, ss:

Received at Olympia, Washington,_____, 191__, of the STATE AUDITOR, warrant on the State Treasurer, No. _____, for the sum of*_____Dollars,

(Do not fill in this amount)

*$_____, and I, the undersigned, do hereby certi-

(Leave this space blank)

fy that the injury above mentioned actually happened to me, as heretofore reported to the Industrial Insurance Commission; that I hereby acknowledge receipt of the amount above mentioned as PARTIAL COMPENSATION for said injury.

(Sign Here)_____

(Write Name Clearly) Payee.

*Leave amount blank, to be filled by Auditor.

Witnesses to Signature Date of Signature_____
_____ Postoffice address_____
_____ Postoffice address_____

STATE OF WASHINGTON, County of_____, ss:

We, the Industrial Commission, of the State of Washington, hereby certify that the claim for compensation above mentioned has been investigated, approved and the above partial payment regularly allowed by the Commission in the sum of_____Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

_____
Chairman.

_____
Attest: Commissioner.

_____ _____
Secretary. Commissioner.

§ 158. Form of pension voucher—Permanent total disability. (w)

Year_____
Month ending ___
STATE OF WASHINGTON, Claim No _____
To_____Dr. Class_____
Distribution ____

Post Office Address:_____

COMPENSATION under Chapter 74, Session Laws 1911, on account of permanent total disability resulting from injury occurring on the_____day of_____, 19__, at_____ Washington, as allowed and approved by Order of the Industrial Insurance Commission on record, file (page_____) in the Commission's office, as computed on the following relationship:

Name	Age	Relationship	Amount
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
		Total_____	$_____

RECEIVED at Olympia, Washington, this_____day of_____ 19__, of the State Auditor, Warrant on the State Treasurer No._____ for the sum of*_____Dollars (*$_____) in full compensation and pension on account of said injury for the month ending _____, 19__, and I hereby fully release and discharge the

*Leave amount blank—to be filled in by Auditor.

State of Washington from any and all further liability or obligation and other or further claims for compensation or pension for said month ending_____, on account of said injury.

(Sign Here)_____
(Write Name Clearly) Payee.

Witnesses:

_____ Post Office Address_____
_____ Post Office Address_____

§ 159. Form of pension voucher—Survivors of deceased workman. (ww)

Year_____
Month ending ___
STATE OF WASHINGTON, Claim No._____
To_____Dr. Class_____
Post Office Address:_____

Compensation under Chapter 74, Session Laws 1911, on account of the death of_____, resulting from injury occurring on the_____day of_____, 19__, at_____, Washington, as allowed and approved by the Order of the Industrial Insurance Commission, on record, file (page _____) in the Commission's office, as computed on the following relationship:

Name	Age	Relationship	Amount
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
		Total_____	$_____

RECEIVED at Olympia, Washington, this_____day of_____ 19__, of the State Auditor, Warrant on the State Treasurer No._____ for the sum of*_____Dollars (*$_____) in full compensation and pension on account of said injury and death for the month ending_____ _____, 19__, and I hereby fully release and discharge the State of Washington from any and all further claims for compensation or pension for said month ending_____, on account of said death.

(Sign Here)_____
(Write Name Clearly) Payee.

Witnesses:

_____ Post Office Address_____
_____ Post Office Address_____

*Leave amount blank—to be filled in by Auditor.

§ 160. Form of burial expense voucher—Account of deceased workman. (x)

Claim_____
Class _____

STATE OF WASHINGTON,

To_____, Dr.

Postoffice address)_____

Compensation under Chapter 74, Session Laws 1911, for $_____ Burial Expense of_____, who sustained fatal injury on the_____day of_____, 191__, at_____ Washington, as allowed and approved by the order of the Industrial Insurance Commission on record, file (page _____) in the Commission's office.

STATE OF WASHINGTON, County of_____, ss:

Received at Olympia, Washington, this_____day of_____, 191__, of the State Auditor, warrant on the State Treasurer No._____ for the sum of*_____Dollars,

(Do not fill in this amount)

*($_____) in full compensation as allowed under

(Leave this space blank)

the above mentioned act, for the burial of said deceased by_____ _____, undertakers; and I hereby certify that the above mentioned amount is true and correct and is due for services performed by me as said undertaker in reimbursement on the amount of $——— paid by me to said undertaker.

Signature_____

For_____Payee.

Subscribed and sworn to before me this_____day of_____, A. D. 191__

Notary Seal Here. _____

(Title of office)_____

STATE OF WASHINGTON, County of Thurston, ss:

We, the Industrial Insurance Commission of the State of Washington, hereby certify that the claim for burial expense above mentioned has been investigated, approved and regularly allowed by the Commission in the sum of_____Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

Attest:

_____
Chairman.

_____
Commissioner.

_____ _____
Secretary. Commissioner.

*Leave amount blank to be filled by auditor.

§ 161. Form of final settlement voucher. (y)

STATE OF WASHINGTON,

To_____, Dr.

(Claim No____) (Class No____) (Postoffice address)_____

AWARD, Computed on basis of time lost_____working days, _____$_____ $_____

Permanent Partial Disability sustained____$_____

being compensation under Chapter 74, Session Laws 1911, in full settlement of Claim of above claimant for injury_____

_____

_____

occurring on the_____day of_____, 191__, at _____, Washington, as allowed and approved by the findings and order of the Industrial Insurance Commission on record, file (page_____) in the Commission's office.

STATE OF WASHINGTON, County of_____, ss:

Received at Olympia, Washington_____, 191__, of the STATE AUDITOR, warrant on the State Treasurer, No._____, for the sum of*_____Dollars,

(Do not fill in this amount)

*$_____, I the undersigned, do hereby certify

(Leave this space blank)

that the injury above mentioned actually happened to me, as heretofore reported to the Industrial Insurance Commission; that I hereby acknowledge receipt of the amount above mentioned as full and complete compensation for said injury, and I hereby fully release and discharge the State of Washington from any and all further liability or obligations for or on account of said injury and from any other or further claims for compensation on account thereof.

(Sign Here)_____

(Write Name Clearly) Payee.

Witnesses to Signature:

_____ Postoffice address_____

_____ Postoffice address_____

STATE OF WASHINGTON, County of_____, ss:

We, the Industrial Insurance Commission of the State of Washington, hereby certify that the claim for compensation above men-

*Leave amount blank to be filled by auditor.

tioned has been investigated, approved and regularly allowed by the Commission in the sum of_____Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

_____
Chairman.

Attest:

_____
Commissioner.

_____ _____
Secretary. Commissioner

§ 162. Form of election to receive compensation and assignment of claim—Injuries by defaulting employer. (z)

WHEREAS, on or about_____, 19__, _____
(Name of Employé.)
employed by _____,
(Name of Employer)
of_____, while in the course of his employment, received injuries as follows:

_____
(State Nature and Result of Injuries)
_____
_____
_____

and,

WHEREAS, such injuries occurred during a period of default in the payment of a premium due by such employer under the provisions of Chapter 74, of the Laws of 1911, after demand for the payment thereof;

NOW, THEREFORE, _____
(Name of Injured Person, Widow, Children, or Dependents, as the case may be)

_____
hereby elect__ to receive compensation for such injuries under and in accordance with said Chapter 74, Laws of 1911; and,

In consideration of the premises hereby assign__ and transfer__

to the State of Washington, for the benefit of the accident fund created by said act, any and all rights or causes of action, and all claims and demands against said employer arising out of the injuries above described.

Witnesses: _____

_____ _____

_____ _____

§ 163. Election to receive compensation and assignment of claim—Injury by other than employer. (zz)

Whereas, on or about _____, 19__, _____, employed by_____,
(Name of employé.) (Name of employer.)
of _____, while in the course of his employment, away from the plant of his employer, received injuries as follows: _____ (State nature and result of injuries), and,

Whereas, such injuries were due to the negligence or wrong of another not in the same employ, viz., _____, servants or agents;

Now, therefore, _____ (Name of injured person, widow, children or dependents, as the case may be) hereby elect__ to receive compensation for such injuries under and in accordance with the provisions of Chapter 74, of the Laws of 1911; and,

In consideration of the premises hereby assign__ and transfer__ to the State of Washington, for the benefit of the accident fund created by said act, any and all rights or causes of action, and all claims and demands against any and all persons and corporations arising out of the injuries above described.

Witnesses: _____

_____ _____

_____ _____

STATEMENT OF CONDITION OF ACCIDENT FUND JUNE 1, 1912.

Class.	Kind of Business.	Total Amount Paid in.	Claims Paid.	Estimated Reserve on Approved Claims.	Balance in Fund.	No. of Deaths Approved.
1	Sewers	$11,183 90	$3,500 60	----------	$7,683 30	----
2	Bridge and Tower	12,145 14	2,208 90	$3,556 60	6,379 64	1
3	Pile Driving	4,781 76	580 85	----------	4,200 91	----
4	House Wrecking	1,716 54	208 50	----------	1,508 04	----
5	General Construction	49,006 90	9,123 31	15,544 20	24,339 39	4
6	Power Line Installation	34,980 43	6,018 31	1,321 78	27,640 34	2
7	Railroads	52,842 15	15,293 64	14,079 87	23,468 64	5
8	Street Grading	17,526 69	3,878 00	----------	13,848 69	----
9	Ship Building	5,077 88	1,066 20	----------	4,011 68	----
10	Lumbering, Milling, etc.	180,094 00	97,560 99	66,936 82	15,596 19	24
12	Dredging	3,774 63	1,483 80	----------	2,290 83	----
13	Electric Systems	9,373 21	2,549 08	4,605 34	2,218 79	2
14	Street Railway	26,617 83	3,455 53	1,326 00	21,836 30	1
15	Telephone and Telegraph	4,232 12	738 06	784 52	2,709 54	1
16	Coal Mining	81,962 42	22,494 26	24,718 23	34,749 93	9
17	Quarries	12,449 16	3,858 90	2,491 55	6,100 71	1
18	Smelters	4,898 52	2,919 50	----------	1,979 02	----
19	Gas Works	6,889 97	465 41	2,963 83	3,460 73	1
20	Steam Boats	493 67	375 00	----------	118 67	----
21	Grain Elevators	8,270 65	3,115 16	----------	5,155 49	----
22	Laundries	7,544 70	1,469 10	----------	6,075 60	----
23	Water Works	2,492 08	250 40	----------	2,241 68	----
24	Paper Mills	5,366 61	2,861 65	----------	2,504 96	1
25	Garbage Works	973 83	334 90	----------	638 93	----
29	Wood Working	18,992 31	9,809 32	----------	9,182 99	----
30	Asphalt Manufacturing	768 81	----------	----------	768 81	----
31	Cement Manufacturing	6,907 27	1,263 33	902 08	4,741 86	2
33	Fish Canneries	11,041 98	1,199 40	----------	9,842 58	----
34	Steel Manufacturing Foundries	16,529 58	9,014 05	3,211 37	4,304 16	1
35	Brick Manufacturing	5,613 74	601 95	----------	5,011 79	----
37	Breweries	5,715 78	1,335 98	3,391 17	988 63	1
38	Textile Manufacturing	3,474 18	515 50	----------	2,958 68	----
39	Food Stuffs	2,799 93	395 97	----------	2,403 96	----
40	Creameries	2,111 60	87 25	----------	2,024 35	----
41	Printing	6,464 72	717 35	----------	5,747 37	----
42	Longshoring	9,204 08	2,718 76	3,963 34	2,521 98	1
43	Packing Houses	3,011 20	1,001 60	----------	2,009 60	----
44	Ice Manufacturing	1,372 13	352 55	----------	1,019 58	----
45	Theatre Stage Employés	432 50	----------	----------	432 50	----
46	Powder Works	301 90	1,518 95	----------	*1,217 05	----
47	Creosoting Works	628 16	18 15	----------	610 01	----
48	Non-Hazardous Elective	886 64	77 05	----------	809 59	----
	Totals	$640,951 30	$216,435 21	$149,796 70	$274,719 39	57

*Overdraft.

§ 164. Statistical reports on the operation of the act.—The Washington Industrial Insurance Commission have published Reviews of the first four, eight and twelve months' operation of their administration of the Washington law which give very important statistical results of the status of the forty-eight funds which have been created by the contributions made by the corresponding classes of employers and from which the injured workers have been paid and awarded their compensations. Their report for the first year's operation of the act is given in the following section. These statements are of very great importance, not only to lawyers, judges, economists and legislative agents of the State of Washington, but to those of States having on their statute books similar laws, or of States which contemplate the enactment of such laws.

§ 165. Review of the first year's operation of act.

SUMMARY OF OPERATION.

Firms listed and assessed	5,750
Employés listed and protected	130,000
Total accidents reported	11,896
Claims allowed	6,984
Disallowed, suspended and waived	2,256
In process of adjustment	953
Accident report incomplete	1,703
Paid into accident fund	$980,445.75
Paid out on claims	$445,527.51
Invested in interest-bearing reserves to guarantee pensions	243,984.95
Net balance in accident fund	290,933.29
Gross expense of commission	107,868.08
Total funds handled by commission	1,088,313.83
Expense of doing business	9.9 per cent.

When the act was under discussion in the legislature and, even after it had become effective, the statement was made repeatedly that no state commission, without the spur of profit, could administer the law without wasting thousands of dollars.

"No state," said the law's critics, "can do business as cheaply as a private company." And yet, where the private casualty com-

pany is spending over sixty per cent. to handle its business, the state is doing it for nine and nine-tenths per cent. The German Imperial system of compensation costs twelve and eight-tenths per cent. for administration.

Million Dollar Accident Fund.

The preliminary audit for October, November and December, 1911, and its resulting assessments up to January, 1912, secured for the administration of the accident fund $428,057.42. The re-audit and the resumption of active logging and mill operations in April increased the accident fund to $640,951.30. A year's contributions have nearly touched the million mark, the gross amount collected up to midnight, September 30th, being $980,445.75.

The gross year's result then is the sum of nearly one million dollars collected and $689,512.16 paid out to injured workmen and invested in reserves to guarantee pensions.

Paid out directly to claimants without expense of litigation or serious cost to the state at large, $445,527.21 which went to injured workmen and their dependents. To insure the payment of pensions, now being distributed monthly to the dependents of 121 injured workmen, the state treasurer has set aside $243,984.95, now bearing interest at an average rate of 5¼ per cent.

Under the casualty insurance system, $600,000 was collected annually from the manufacturers of the state, less than $100,000 found its way back to the injured workman. Today, with a quarter of a million invested in Washington bonds, school, county and municipal, permanently invested and assisting in the state's development, nearly a half million, net, has been paid from the accident fund to relieve the needs of injured workmen, their families and dependents.

Pensioners Number 235.

Naturally, the pension roll of the Commission is increasing. From the one pensioner in October, 1911, with a monthly income of $25.00, the roll has swelled to 235, with a monthly payroll of $2,364.50.

Stated briefly, the death claims brought before the Commission are in process as follows:

Pensions awarded	121
Suspended and rejected (No dependents)	191
Under investigation	38
Incomplete	22
Total	282

Preliminary figures on 1,000 cases indicate that less than three per cent. of all accidents reported under the Workmen's Compensation Act show a liability that would be good for a verdict under the old law, consequently 97 per cent. of all the above cases would be probably uncompensated under the casualty system.

The monthly average of accidents has increased inevitably owing to the resumption of business and a better understanding of the law. In February, 1912, it was about eight hundred a month. In September of the same year, the total was nearly one thousand. 11,896 formal reports of accidents were received during the year.

Why Contractors Are Continuously Assessed.

The chief auditor's statement of the condition of the accident fund at the end of one year's operation is interesting. In the first eight classes, continuous assessments have been made by the Commission. The reasons for these continuous assessments are set forth briefly as follows:

1. No class of the first eight has a balance that a series of fatal accidents would not reduce below a point of safety.

2. If assessments had not been continuous the small contractor might have escaped paying on his short-term contracts.

3. Accidents have been continuous and assessments would have been levied finally to pay accident-costs in any event, the difference being that the larger contractor, being well established and easily accessible, would have been compelled to carry the cost, not only of his own accidents, but also of those occurring on the work of the small contractor who might have escaped assessment.

4. The placing of competitors on the same plane for the purpose of bidding on contracts demands that every contractor shall be assessed on every job. If the rates are too high, the legislature can adjust them.

5. The general contractor is often listed in several classes; sometimes on big jobs, sometimes on small, sometimes idle; now on public work, secured by law; now on private work where the owner may be holden and subjected to loss. The only safe way seems tc be continuous assessment until the fund reaches a figure where all can be relieved. In any case, the law provides a readjustment of accounts each year, so that the inequities or overpayments may be corrected.

6. The extreme hazard of all operations in the contractors' classes compels a wide margin of safety; hence the inflexible rulings aforesaid.

Legislative Remedy for "Casual Employment Problem."

In this connection, the need is emphasized of legislation to cover the whole matter of casual employment. The farmer who

"lets a contract" for a barn, cattle shed or hog pen; the private person who builds himself a bungalow by day labor; the business man who puts up a grand stand, dancing pavillion or boat house; the rancher who "hires out" a land clearing job; the property owner who "hires help" to paint his hotel, block or apartment house; all of these operations are extremely difficult to list and assess. Practically never does the Commission hear of them except when an accident occurs; then both employer and employé hasten to contribute and demand compensation respectively.

In one typical case, the contribution of the employer, who was discovered only after a carpenter had lost his eye through a flying nail, was $3.85, while the accident cost the employers of class 5 $1,064.60.

Some penalty for concealment of payroll will doubtless be imposed by the next legislature.

Lumbermen's Class at Flat Cost.

In class 10, lumbering, logging, etc., the law permits a rate of $2.50 per hundred dollars of payroll. A call was made on these industries for seven months' assessments, resulting in a fund of $324,102.86, from which claims were paid to the amount of $206,-146.50, with $117,366.32 invested in reserves. This class, with a net balance of only $590.04 has been watched very closely for purposes of comparison. Fortunately, the size of the class and the condition of business makes it possible to replenish this fund at once by another call, which is now in progress. Meanwhile, the flat cost of compensation is apparent from the showing, the actual rate being $1.46 per hundred dollars.

In Class 10, Accounts Receivable (uncollected premiums), amounted Oct. 1, to $53,562. Accounts Payable, including reserves on 7 death claims and award vouchers mailed out but not yet signed or certified to the state auditor for warrants, aggregate practically the same amount.

Attention is frequently directed to the printing trade—Class 41, on which the law fixes a rate of $1.50 per hundred. The preliminary assessment created a fund of $6,519.19, only $1,345.65 of which was required to pay accident-loss. The assessed rate was therefore thirty-eight cents per one hundred dollars, but the accidents only required a rate of seven cents per hundred dollars. Clearly this fund will be sufficient for many months to come.

Low Insurance Cost to Employers.

Classes 30, asphalt manufacturing, and 45, theater stage employés, have had no accidents charged against them, but their diminutive funds of $971.50 and $445.14 respectively would be swept

away by one serious accident. Other classes showing very small percentages of rate required to meet accident cost are as follows:

	Rate per $100 Fixed by Law	Rates per $100 Assessed	Rates per $100 Necessary
Class 33, Fish Canneries	$3.00	.75	.14
Class 35, Brick Manufacture	2.00	.50	.13
Class 38, Textile Manufactures	1.50	.38	.12
Class 39, Food Stuffs	1.50	.38	.09
Class 40, Creameries	1.50	.38	.05
Class 44, Ice Manufacturing	2.00	.50	.27
Class 47, Creosoting Works	2.50	.61	.18

The non-hazardous class, created under section 19 of the act, by which employers and employés may elect to come under the act, even though excluded by the nature of their work, is growing in favor. It provides mutual protection at a rate of $1.35 per hundred dollars. The Commission collected three months' premium from these employers, $1,092.30, at a rate of thirty-four cents per hundred dollars, but only $83.95 was required for meeting the accident-loss, a necessary rate of only three cents per one hundred dollars.

Another class which shows a remarkable record of low accident-cost is 14, street railways. With a legal rate of $3.00 per hundred dollars the Commission collected the statutory three months' contribution, rate seventy-five cents, with the result that only twenty-three cents per hundred dollars was required to compensate injured workmen in that class. The most liberal rulings were adopted in compensating accidents occurring in connection with street railways after full consultation with the street railway companies. Compensation was paid in cases where a conductor was beaten by a passenger, where a motorman was assaulted by a truck driver and even where a conductor was bitten by a dying dog run over by the car, yet the rate of twenty-three cents per hundred dollars carried all awards made by the Commission.

Hazardous Risks at Low Rate.

Coal mining, Class 16, one of the most hazardous industries in the state, secured a fund of $82,398.83 by a six months' call, $40,816.61 of which was paid out for accidents, and $28,041.23 invested in pension reserves. The legal rate is $3.00 per hundred dollars, and the assessed rate $1.50, the necessary rate $1.23. The same thing applies to quarries, with a legal rate of $4.00, assessed rate of $1.33, and required rate of sixty-eight cents per hundred dollars.

Laundries, a class in which several employers deliberately became defaulters, the legal rate is $2.00 per hundred dollars, but

three months' assessment, rate fifty cents per hundred dollars created a fund of $7,671.21, out of which the accident-cost required $2,542.90, a rate of only seventeen cents per hundred dollars.

The Powder Mill Class.

Class 46, powder manufacturers, is still overdrawn, but the fund's condition, as it would have been with the proper contributions collected, is interesting:

10% of payrolls for Oct., Nov., Dec.	$ 3,956.49
Shortage on January 1st	4,302.86
10% of payrolls for Jan. 1 to Oct. 1	11,811.99
Total	$20,071.34
Less pension reserves and burial allowances	8,259.35
	$11,811.99
Penalty on Imperial Powder Company (Employed two girls under lawful age)	1,297.16
Balance if paid	$13,109.15

A rate of five per cent. would have been sufficient to pay for the accidents in the powder mill class even with the Chehalis disaster victims fully compensated.

No rates are extended in the first eight classes, continuous assessment and the varied ratings in each class making comparison impracticable.

Appeals.

Out of the awards, suspensions and rejections made on the twelve thousand accident reports, only twenty-one appeals have been taken to the courts. Of these, three were withdrawn and three tried. The remainder are still pending. Only one appeal is by an employer, three are by dependents and the remainder by the workmen themselves. One appeal involves jurisdiction over interstate commerce; one whether a minor's dependent parents can receive a pension for life. In only two cases permanent disabilities have been found by the jury, contrary to the Commission's judgment.

Suits aggregating forty-three in number have been instituted by the attorney general against defaulting employers to collect the premiums due from them to the Accident Fund. Of these forty-three cases, seventeen were settled before judgment, four were settled subsequent to judgment, while in seven of the cases judgments have been entered but not yet collected. One case was discontinued because the plant was not in operation after October 1, 1911. One other case was discontinued for the reason that the employer had no one in his employ subsequent to October 1, 1911. Thirteen of the forty-three cases are still pending.

§ 166. Official state safety bulletin.—The Industrial Insurance Commission of Washington, the State Bureau of Labor and the Governor of the State, August 1, 1912, inaugurated a campaign for the reduction of accidents by the circulation and posting of a safety bulletin in the following form:

PREVENT ACCIDENTS!

1. "Safety first—better cause a delay than an accident."

2. 10 per cent. of the men employed are being hurt—that's too many.

3. Every accident costs money—money should buy comforts, not be wasted on preventable pain.

4. Help to prevent accidents. It is a duty you owe yourself, your fellow workmen, your family, their families, the employer and the State.

5. "An accident that could have been prevented by a safety device is a disgrace to an employer. It shows either a lack of care or a lack of efficiency."—Don D. Lescohier.

6. "The amount of sorrow and suffering that will be eliminated when safety work is taken up earnestly by our manufacturers is beyond the comprehension of those who have not given the subject careful thought."—Safety Secretary Young, Illinois Steel Co.

7. "Safety committees composed of the men, not the superintendents or foremen, but the men, are the best inspectors. They will find the danger points and suggest remedies, and then they will make the suggestions go because they are their own ideas."—Chairman Richards, Safety Committee, C. & N. W. Ry.

8. "In 1909 few competent authorities dared to assert that more than 50 per cent. of the industrial accidents were preventable. Today we do not hesitate to say that 75 per cent. are preventable."—Minnesota Bureau of Labor.

9. Every injury, no matter how slight, should receive proper medical attention. Infection—blood poison—results from ignorance and neglect. Amputations often follow.

10. "Constant and close supervision by competent superintendents and foremen can prevent accidents in those operations (such as logging or gravel pit work) where safety devices cannot be utilized."—Director Van Schaack, Aetna Insurance Company.

11. PERSONAL CAUSES OF ACCIDENTS.

Minnesota Bureau of Labor Report, 1910—Employers' Opinions:

	Per cent.
Inherent danger of industry (includes defective and insufficiently guarded machinery)	61

Contributory negligence of employé (want of skill and carelessness)	20.7
Inherent danger and contributory negligence combined	10.5
Negligence of injured employé	3.6
Negligence of fellow workman	3.1
Fellow workman and injured employé combined	1.0
Employer	.1
Total (4,084 cases)	100

12. Every accident has its inevitable and definite effect upon the cost of production under the present Compensation Act. The Commission has the power and has already fixed penal rates upon establishments because of poor or careless management or work unduly dangerous. The workman's instinct of self-preservation should be supplemented by the wrath of his foreman when he is careless of the safety of his fellow workers.

INSTRUCTIONS.

Do not take off any safeguard or protective device. If you take a chance and get hurt, it decreases your compensation 10 per cent. (Sec. 9, Compensation Act.) If the superintendent, foreman, or any other person removes any safeguard, report the fact to this Commission.

Do not hesitate to lend a hand when anyone is hurt. Call any doctor desired. Compensation is paid, regardless of whose fault causes the injury. Give the Commission the full facts fearlessly. Concealment of causes helps no one.

The State compels employers to provide funds out of which it pays reasonable compensation in case of injury.

The State compels employers to provide funds out of which it pays reasonable compensation in case of injury. If you do not think the awards sufficient, remember it is better than law suits and delays under the old system, and where 80 out of each 100 injured had no legal remedy whatever.

There is no fund or provision, however, for payment by the State of charges for ambulance, physician, surgeon, hospital, nurse, medicine, or surgical appliances. The "first-aid" provision was stricken from the Compensation Act before its passage by the legislature.

Much needless infection and time-loss should be prevented by the employers keeping handy a supply of antiseptic gause, sterilized bandages (keep free from dust or handling) and tincture of iodine. Paint all small wounds, bandage, then send man to doctor.

When an accident happens the following papers should be filled out and mailed at once to Olympia:

1. The employer's report, Form (k) (green).

2. Workman's claim for compensation, Form (l) (white).
3. Report of attending physician, Form (m) (pink).
4. Report of witnesses, Form (o) (buff).

The employer should keep these blanks on hand. They are furnished free by the State. Unless the injury causes the loss of over one day's time, or results in a disability that impairs the earning capacity 5 per cent., no award will be made by the Commission.

Industrial Insurance Commission of Washington.
By J. H. Wallace,
Hamilton Higday,
Commissioners.

CHAPTER XI.

THE OHIO WORKMEN'S INSURANCE ACT.

Sec.
167. The nature of the Ohio Workmen's Insurance act.
168. Ohio act an insurance act.
169. Ohio act an indirectly compulsory act.
170. Employer's liability under the act.
171. The statute and its interpretation by the board and the attorney-general.
172. The decision of the Supreme Court of Ohio sustaining the law.
173. Workshop and factory inspection and regulation act.
174. Rules of procedure before the state liability board of awards.
175. Procedure as to employers.
176. Forms of applications and notices to be used by employers covered by the act.
177. Form of application for classification of industry and for premium.
178. Form of supplementary report—Accident experience.
179. Form of notice of employer to employés.
180. A comparison of premium rates under the Ohio law with liability insurance rates under compensation laws.
181. Procedure as to injured employés.
Sec.
182. Form of procedure on notices in general.
183. Form of first notice of injury. (a)
184. Form of first notice of death. (b)
185. Formal procedure for procuring medical, nurse, and hospital services and medicines, without compensation.
186. Form of application for money to pay for medical, nurse and hospital services and medicines, without compensation. (a)
187. Form of physician's fee bill. (b)
188. Form of druggist's cost bill. (c)
189. Form of employer's certificate and oath. (d)
190. Form of certificate and oath of lay witness. (e)
191. Formal procedure to obtain money to pay for medical, nurse and hospital services and medicines, with compensation.
192. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)
193. Form of employer's certificate and oath. (b)
194. Form of physician's fee bill. (c)

Sec.
195. Form of druggist's cost bill. (d)
196. Form of medical fee bill and hospital charges. (e)
197. Form of certificate and oath of lay witness. (f)
198. Formal procedure to obtain compensation in case of permanent total disability.
199. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)
200. Form of employer's certificate and oath. (b)
201. Form of physician's fee bill. (c)
202. Form of druggist's cost bill. (d)
203. Form of medical fee bill and hospital charges. (e)
204. Form of certificate and oath of lay witness. (f)
205. Forms to obtain money to pay for medical, hospital and funeral expenses only.
206. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses, without award. (a)
207. Form of undertaker's certificate of death and cost bill. (b)
208. Form of lay witness's certificate in proof of death. (c)
209. Form of physician's certificate in proof of death. (d)
Sec.
210. Form of employer's certificate and oath. (e)
211. Form of physician's fee bill. (f)
212. Form of druggist's cost bill. (g)
213. Form of medical fee bill and hospital charges. (h)
214. Form of certificate and oath of lay witness. (i)
215. Form of procedure to obtain compensation and money to pay for medical, hospital and funeral expenses.
216. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses. (a)
217. Form of proof of dependents. (b)
218. Form of undertaker's certificate of death and cost bill. (c)
219. Form of lay witness's certificate in proof of death. (d)
220. Form of physician's certificate in proof of death. (e)
221. Form of employer's certificate and oath. (f)
222. Form of physician's fee bill. (g)
223. Form of druggist's cost bill. (h)
224. Form of medical fee bill and hospital charges. (i)
225. Form of certificate and oath of lay witness. (j)

§ 167. The nature of the Ohio Workmen's Insurance act.—The distinction between Workmen's Insurance and Compensation Acts has been pointed out in

Chapter I. It is sometimes loosely said that statutes of the nature of the British Workmen's Compensation Act have been enacted in California, Illinois, Kansas, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Washington and Wisconsin, but this statement is too broad. The Workmen's Insurance Acts of Ohio, Washington and even of Massachusetts, are specific adaptations of the German Industrial Insurance Law and the legal basis for these three acts is found in the taxing power of the State exercised through its police power for the protection of the health, safety and the general welfare of the public. The Compensation Acts of the nine other States mentioned are adaptations of the British Workmen's Compensation Acts and in no way depend upon the taxing power of the States. The basis of the two kinds of acts are fundamentally different under our constitutional limitations.

§ 168. Ohio act an insurance act.—The Ohio Act is in fact a workman's Insurance Act, for the reason that it makes the claim of the injured workman a claim against a fund and not against his employer, as is the case in the so-called workman's compensation laws. There are only two exceptions of very rare occurrence to this statement. The first is that in which the State Liability Board of Awards denies the injured workman any relief whatever, and in that case his right to sue the Board of Awards is preserved, but he is denied the right to sue his employer.[1] His action is against the board. The second exception occurs where a personal injury is suffered or when death results to an employé from personal injuries which have "arisen from the willful act of such employer of any such employer's officers or agents from the failure of such employer, or of any of such employers' officers or agents, to comply

[1] See § 36 of Act.

with any municipal ordinance or lawful order of any duly authorized officer, or any statute for the protection of life or safety of employés." This is the only case in which is retained the right of the employé to sue his employer who has paid the premium prescribed by the Board of Awards. An injured employé, however, who files a suit on such a claim by that act waives any claim to compensation from the fund created by the act.[2] The rarity of such an occurrence is shown by reference to the operation of the British Compensation Act. The actual figures of an English insurance company for one year (1908) show that out of 10,343 accidents there were only fifty-five employers' liability claims.[3] This showing is made stronger when it is understood that under the British Compensation Act, an injured employé may elect to sue at law or accept compensation given by the act, and his election to sue does not deny him the right to compensation under the Compensation Act, in case the suit at law should fail. Under the Ohio act, however, the moment the employé files his suit he stakes all his chances on winning his suit and waives any claim against the fund, and he has more to prove than in ordinary suits at law previous to the passage of the act.

§ 169. Ohio act an indirectly compulsory act.— When the employer has paid the premium and posted the notice required by the act[3a] and the workman continues in the service of such an employer and is injured he is compelled to accept the compensations provided by the act, excepting the rare case cited in the preceding section. The act is in fact compulsory on the part of the employé.

[2] See § 21-2 of Act.

[3] See Senate Document No. 338, 62d Congress, 2d Session, p. 103, Report of the Employer's Liability and Workmen's Commission of the United States. Feb. 21st, 1912.

These results are strongly supported by the experience under the Washington Act. See review of eight months operation by the Industrial Insurance Commission of Washington; ante § 166.

[3a] See §§ 20-1.

A color of option on the part of the employer is found in section 20-1 of the Ohio Act. In the first line the word "any" was inserted in the place of "every," and in the third line the word "who" was inserted before the words "shall pay, etc.," by the opponents of the mandatory form of the original draft of the law. The penalty, however, for the failure to pay the premiums prescribed by the law, namely, the taking away of all of the common-law defenses from the employer, remains in the law, and is the same penalty recommended by the Employer's Liability Commission of Ohio when the draft of the law was in the mandatory form. The law in effect is mandatory.

§ 170. Employers' liability under the act.—Briefly stated, the law is that the employer who employs five or more workmen or operatives regularly in the same business is relieved from all liability for injuries in course of employment where he pays into the State insurance fund the premiums fixed by the State Liability Board of Awards. The exception is in the case of injuries wilfully inflicted by the employer. Where the premiums are not paid the employer is liable as under the common law, except that he is denied the common-law defenses.

§ 171. The statute and its interpretation by the board and the attorney-general.—The Ohio Act is entitled an act to create a State insurance fund for the benefit of injured, and the dependents of killed employés, and to provide for the administration of such fund by a State liability board of awards, and reads as follows:

Sec. 1. There is hereby created a State liability board of awards, to be composed of three members, not more than two of whom shall belong to the same political party, to be appointed by the governor, within thirty days after the passage of this act, one of which members shall be appointed for the term of two years,

one member for four years and one member for six years, and thereafter as their terms expire the governor shall appoint one member for the term of six years. Vacancies shall be filled by appointment by the governor for the unexpired term.

Note by the board.—In obedience to the provisions of this section, Governor Harmon, on July 14, 1911, appointed as members of the State Liability Board of Awards, Mr. T. J. Duffy, of East Liverpool, Democrat, for a term of two years; Mr. William A. Grieves, of Columbus, Republican, for a term of four years; and Mr. Wallace D. Yaple, of Chillicothe, Democrat, for a term of six years. On July 25, 1911, Mr. Grieves resigned and on August 24, 1911, the Governor appointed Mr. Morris Woodhull, of Dayton, to fill the vacancy thus created. Mr. Duffy has for some years been President of the National Potters' Association; Mr. Woodhull is a manufacturer; and Mr. Yaple is a lawyer.

Sec. 2. Each member of the board shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duty as such member, or serve on or under any committee of any political party.

Note by the board.—Each member of the board upon his appointment promptly complied with the requirements of this section.

Sec. 3. Each member of the board shall receive an annual salary of five thousand dollars, payable in the same manner as salaries of State officers are paid.

Sec. 4. The board shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the board shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling

of each member's name by the secretary and each vote shall be recorded as cast.

Note by the board.—See note to Section 6.

Sec. 5. A majority of the board shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full board so long as a majority remains. Any investigations, inquiry or hearing which the board is authorized to hold, or undertake, may be held or undertaken by or before any one member of the board. All investigations, inquiries, hearings and decisions of the board, and every order made by a member thereof, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, shall be deemed to be the order of the board.

Note by the board.—See note to Section 6.

Sec. 6. The board shall keep and maintain its office in the city of Columbus, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals and maps. All necessary expenses shall be audited and paid out of the State treasury. The board may hold sessions at any place within the State.

Note by the board.—The Board is maintaining offices on the sixth floor of the Hartman Building, corner of State and Third Streets, Columbus, Ohio.

Daily sessions of the Board are held, and all sessions are open to the public. The proceedings of the Board are recorded in its minutes, and in addition, a separate system of records is maintained in the claims department, which department is in charge of the Chief Clerk.

Sec. 7. The board may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation. Such employments and compensations shall be first approved by the governor, and shall be paid out of the State treasury. The members of the board, ac-

tuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants that may be employed shall be entitled to receive from the State treasury their actual and necessary expenses while traveling in the business of the board. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the board.

Note by the board.—The law requires the State to pay the entire cost of administration of the state insurance fund, leaving the whole amount paid into such fund by the employers and employés to be devoted to the payment of awards for injuries.

For convenience and the proper systemization of the work of the Board, the following departments have been established:—

An Auditing Department, which has charge of all accounts; and Actuarial Department, which has charge of classifications and rate making under general rules adopted by the Board; a Clerical Department, with which all claims for compensation are first filed and records of claims kept; an Inspection Department, the duties of which will be to make investigations of injuries, both before and after the awards of compensation, the jurisdiction of the Board being a continuing one; and, a Medical Department, consisting of a Chief Medical Examiner, who devotes his entire time to the Board, and such local medical examiners as it will be found necessary to appoint. The duty of the Chief Medical Examiner will be to examine all physician's certificates filed in the claim department and to require examinations to be made by local medical examiners in all cases in which it may seem advisable.

Sec. 8. The board shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accidents and injury to employés, the nature and extent of the proofs and evidence and the method of taking and furnishing the same, to establish the right to benefits of compensation from the State insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Sec. 9. Every employer shall furnish the board, upon request, all information required by it to carry out the purposes of this act. The board or any member thereof or any person employed by the board for that purpose, shall have the right to examine under oath any employer or officer, agent or employé thereof.

Note by the board.—See note to Section 12.

Sec. 10. Every employer receiving from the board any blank with directions to fill the same, shall cause the same to be properly filled out as to answer fully and correctly all questions therein propounded, and if unable to do so shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the board within the period fixed by the board for such return.

Note by the board.—See note to Section 12.

Sec. 11. Each member of the board, the secretary and every inspector or examiner appointed by the board shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

Sec. 12. In case of disobedience of any person to comply with the order of the board, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the probate judge of the county in which the person resides, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from such court on a refusal to testify therein.

Note by the board.—Sections 9, 10 and 12 are construed to

apply to all employers coming within the purview of the act, whether subscribers to the State Insurance Fund or not. However, it is not the intention of the Board to exercise the powers conferred on it by these sections except in extreme cases. It is earnestly desired that the provisions of these sections be strictly observed by employers, as such observance will be of great assistance to the Board in its work.

Sec. 13. Each officer who serves such subpoenas shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the board or an inspector or examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid from the State treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the board. No witness subpoenaed at the instance of a party other than the board or an inspector shall be entitled to compensation from the State treasury unless the board shall certify that his testimony was material to the matter investigated.

Sec. 14. In an investigation, the board may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by the law for like depositions in civil actions in the court of common pleas.

Sec. 15. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the board, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the board with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such tran-

script shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of common pleas.

Sec. 16. The board shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the State insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

Note by the board.—All blanks and forms prescribed by law or necessary in the judgment of the board for the administration of the law have been prepared and will be furnished free of cost to all employers and employés electing to operate under the law.

Sec. 17. The State liability board of awards shall classify employments with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total pay roll and number of employés in each of said classes of employment, sufficiently large to provide an adequate fund for the compensations provided for in this act, and to create a surplus sufficiently large to guarantee a State insurance fund from year to year.

Note by the board.—The duty enjoined upon the Board by the foregoing section is one of the most important contained in the law, for the object would seem to be to require the Board to so classify employments and construct its rates as to create a fund sufficiently large during a given period to provide compensation for all injuries and deaths occurring in that period, although payments from the fund may continue over a period of six years. After giving much consideration to the subject, the Board, on February 29th, 1912, adopted a resolution prescribing a general rule of classification, in pursuance of which rates have been fixed for each class. Every establishment or plant in the state will fall automatically into one of the classes established under this rule. The resolution is as follows:

"Be it Resolved, that in accordance with the provisions of Section 17 of the act entitled, 'An Act to create a state insurance fund for the benefit of injured, and the dependents of killed employés, and to provide for the administration of such fund by a state liability board of awards,' (102 O. L., 524), that all employments are hereby classified with respect to their degree of hazard and the risks of the same; and that rates of premium of the risks of the same, based upon the total pay roll and number of employés in each of said classes of employment, for each six months period be fixed in accordance with the following tables, each of said employments being divided into five classes on the following basis, viz.:

Class 1. Employments having 10 or less accidents per $100,000.00 of pay roll, and having no neath nor permanent disability.

Class 2. Employments having over 10 and not more than 40 accidents per $100,000.00 of pay roll, and having no death nor permanent total disability.

Class 3. Employments having over 40 and not more than 100 accidents per $100,000.00 of pay roll, and having no death nor permanent total disability.

Class 4. Employments having more than 100 and not over 200 accidents per $100,000.00 of pay roll, including one death or permanent total disability.

Class 5. Employments having more than 200 accidents per $100,000.00 of pay roll, or more than one death or permanent total disability.

To each of said classes add 3.4% of the total pay roll for each additional death or permanent total disability per each $100,000.00 of pay roll; said classification and rates to be effective until further action of the Board.

Accidents referred to above are the same as injuries required by law to be reported to the State Departments."

Under the plan of classification and rating established by this resolution, employers in any line of industry have it in their power by so conducting their business as to eleminate accidents, to gradually reduce not only their own individual rates, but the rates applicable to the class to which they belong, thus providing for themselves and their employés protection at less cost and fulfilling one of the purposes of such legislation, viz., reducing accidents to a minimum.

The author's construction.—The intent of this section is to group or classify employments into classes "with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premiums of the same," and it is the opinion of the author that the language quoted means that all employers engaged in the same business (brewing for example) should pay the same rate

of premium on the payroll. Under the Washington act the employments are grouped into different classes according to their individual hazard and a uniform rate is imposed. This classification in intent responds to the intent with which the author drafted said section 17. This section is an exact copy of paragraph (b), § 30, page LXXV, part I, Report of the Employers' Liability Commission of Ohio.

In Ohio all employers who are engaged in the brewing business should pay the same rate. Under the construction placed upon this section by the State Liability Board of Awards five different rates might be made to the brewers of Ohio, depending upon individual experience of the employer. This board has in fact not classified employment at all but has classified employers into five classes according to each employer's individual experience.

The economic basis, in one important particular, and there are many others, for putting all employers who conduct the same kind of business or employment and all employments which carry the same hazard in the same group as to hazard and rate of premium, is, that there is an association of brewers, for example, and a union of brewery workers and that improvements in the manufacture of beer, prevention of accidents, improvements in the welfare of the employés, are best worked out through the association of the brewers and the union of workmen.

Sec. 18. The state liability board of awards shall establish a State insurance fund from premiums paid thereto by employers and employés as herein provided, according to the rates of risk in the classes established by it, as herein provided, for the benefit of employés of employers that have paid the premium applicable to the classes to which they belong and for the benefit of the dependents of such employés, and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of said fund.

Note by the board.—In pursuance of authority conferred by the above section, the following plan has been adopted for the collection of premiums:

Employers desiring to ascertain the cost of insurance are required to file with the Board an application on a form furnished by the Board, which application, among other things, sets forth the nature of the business conducted, its location, the number of workmen or operatives employed, the kinds of employment, and the estimated pay roll for the ensuing six months. This application is sworn to by the applicant, or if a corporation, by one of its officers. The application is examined by the Auditing Department, and if found to be in correct form, is transferred to the Actuarial Department, where the business of the applicant is properly classified and

given the rate to which such class is entitled by application of the rule outlined in the resolution referred to in the note to Section 17. The applicant is then advised by mail as to the classification of his employment and the rate per $100 of pay roll. The applicant then determines whether he desires to elect to operate under the law. If so, he requests the Auditing Department to forward him a "Pay-In-Order," which is the authority for the Treasurer of State to accept the premium. The applicant then forwards the Pay-in-Order, with the amount of money called for by the same, directly to the Treasurer of State, who receives the same, mails a receipt to the applicant, and notifies our Auditing Department. The Auditing Department then forwards to the applicant a certificate, certifying under seal of the Board the fact that the premium has been paid into the state Treasury, and that the applicant will be protected by the law for the period of six months from and after the first week day following the receipt of the premium by the State Treasurer. At the same time the applicant is forwarded proper notices to post about his factory or plant, or premises where his work is carried on, and also forms of notice to be used by his injured employés who expect to file their claims for compensation with the Board.

The method of passing on claims and making awards is outlined in the rules adopted by the Board, as contained in the Appendix. Disbursement of the fund will be made upon orders signed by at least two members of the State Liability Board of Awards, directed to the Treasurer of the State of Ohio, and payable to the injured person, or in the event of his death, to his dependents (See Section 19.)

Sec. 19. The treasurer of State shall be the custodian of the State insurance fund, and all disbursements therefrom shall be paid by him, but upon vouchers signed by any two members of the State liability board of awards.

Note by the board.—No specific provision is made in this section for the investment of the State Insurance Fund, or placing the same at interest, as is required to be done with state funds, but State Treasurer Creamer has followed the direction of the law respecting the deposit of state funds, and now has the State Insurance Fund deposited in various banking institutions, and the same is drawing interest on monthly balances in the same manner as the funds of the state.

Sec. 20. The treasurer of state shall give a separate and additional bond, in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the state insurance fund herein provided for.

Section 20-1. Any employer who employs five or more workmen or operatives regularly in the same business, or in or about the same establishment who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employé, wherever occurring, during the period covered by such premiums, provided the injured employé has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice, shall be deemed a waiver by the employé of his right of action as aforesaid.

Each employer paying the premiums provided by this act into the state insurance fund shall post in conspicuous places, about his place or places of business, typewritten or printed notices stating the fact that he has made such payment; and the same, when so posted, shall constitute sufficient notice to his employés of the fact that he has made such payment; and of any subsequent payments he may make after such notices have been posted.

Note by the board.—(A) This section and succeeding sections (See Sections 20-2, 21-1 and 21-2) have the effect of dividing employers into two general classes, viz.:—

1. Those who employ less than five workmen or operatives regularly in the same business.

2. Those who employ more than five workmen or operatives regularly in the same business.

In other words, this act operates only on those employers employing five or more workmen or operatives, and those who employ a less number are subject to the liability law in force at the time of the going into effect of this act.

Under this act the employers of the second class above enumerated may, by choice or by willful act or negligence, come within any one of three classes:—

1. Employers who employ five or more workmen or operatives regularly in the same business who pay into the state insurance fund the premiums prescribed by the State Liability Board of Awards and who observe the provisions of municipal and state laws

relative to the protection of the life or safety of employés, and who do not willfully injure any employé or employés. Such employers are not liable to respond in damages by civil action for any injury occurring to any employé in the course of his employment, but the employé must resort wholly to the state insurance fund.

2. Employers who employ five or more employés or operatives regularly in the same business, who do not elect to pay the premiums provided for under this act. The employés of such employers, in case of injury, have no claim upon the state insurance fund, their only recourse being a civil action for damages brought in a court of proper jurisdiction. In such actions, the employers are not permitted to avail themselves of the common law defenses enumerated in this act.

3. Employers who employ more than five workmen or operatives regularly in the same business and who pay into the state insurance fund the premiums fixed by the State Liability Board of Awards, but who willfully inflict injury upon their employés or who disregard municipal or state regulations for the safety of their employés. The employés of such employers, in case of injury, have the option of either maintaining a civil action for damages, or filing a claim with the State Liability Board of Awards for an award from the state insurance fund. Having once exercised their option, however, their decision is final, and they must abide by the result. (See Sections 21-1 and 21-2.)

(B) The words "workmen or operatives" are construed to include all employés employed in the same business, or in or about the same establishment, to whom compensation of any nature is paid, excepting the officers of a corporation, as such, and persons wholly engaged as traveling salesmen. (Opinion of Attorney-General Hogan, April , 1912). The only part of the total pay roll to be excluded in the calculation of the premium is the compensation paid to the officers of a corporation, as such, and traveling salesmen. All others are included. Of course, if an officer of a corporation is also employed as a workman or operative in any capacity in the business, other than traveling salesman, his pay roll, as such workman or operative, should be included also.

(C) A liberal construction is given the word "regularly," as used in the above section. It is not construed to mean continuously. If an employer employs five or more workmen or operatives in the business which he is conducting during such portions of the year as conditions permit of the carrying on of the business in which he is engaged, he and his employés are subject to the provisions of the law. (Opinion of Attorney General of March 9th, 1912.)

(D) The words "wherever occurring," as used in the above section, and "wheresoever such injury has occurred," as used in Section 21, should be construed together and considered in connec-

tion with the expression "employés in this state," as used in Section 20-2, so that the employé of an Ohio employer whose contract of employment was made in Ohio is entitled to participate in the State Insurance Fund to which his employer has contributed, in the event of his injury in the course of his employment anywhere within or without the territorial limits of Ohio; and the employer is equally protected from action at law by his injured employé whether the injury occurred within or without the territorial limits of Ohio. (Opinion of Attorney-General Hogan, January 4, 1912.)

(E) The method to be followed by the employer in making his election to pay the premiums provided by this act into the State Insurance Fund has been outlined elsewhere. (See note to Section 18.)

(F) The election of the employé is made by his remaining in the service of his employer with notice that his employer has paid into the State Insurance Fund the premiums provided by law, and his continuation in the service of his employer after such notice deprives him of the right to maintain an action in court, except in the special cases defined in Section 21-2. The posting of the notices prescribed in this section by the employer shall constitute sufficient notice to the employé of the fact that such payment has been made, and the continuance of the employé in the service thereafter, in effect constitutes an implied contract between employer and employé to the effect that the employé will resort to the State Insurance Fund only for compensation in case of injury. (Opinion of Attorney-General Hogan, April 4, 1912.)

(G) There is no distinction between "minors" and "adults" in the manner of election. All employés elect in the same manner regardless of whether they are minors or adults, and minors are dealt with by the Board in all respects in the same manner as adults.

Sec. 20-2. For the purpose of creating such state insurance fund, each employer who employs five or more workmen or operatives regularly in the same business, or in or about the same establishment, and his employés in this state, having elected to accept the provisions of this act, shall pay, on or before January 1, 1912, and semi-annually thereafter, the premiums of liability risk in the classes of employment as may be determined and published by the state liability board of awards. The said employers for themselves and their employés shall make such payments to the state treasurer of Ohio, who shall receive and place the same to the credit of such

state insurance fund. The premiums provided for in this act shall be paid by the employer and employés in the following proportions, to-wit: Ninety per cent. of the premium shall be paid by the employer and ten per cent. by the employés. Each employer is authorized to deduct from the pay roll of his employés ten per cent. of the said premiums for any premium period in proportion to the pay roll of such employés; no deduction shall be made except for that portion of the premium period antedating such pay roll. Each employer shall give a receipt to each employé showing the amount which has been deducted and paid into the state insurance fund.

Note by the board.—(A) The plan devised by this law contemplates that the employer will have paid into the State Insurance Fund on or before January 1, 1912, the amount prescribed by the Board, and thereafter, within the period of time covered by such payment, all accidents occurring to employés of such employers as have contributed to such fund, except as provided by Section 21-2, shall be compensated out of such fund exclusively. The amount paid by each employer will be determined by the classification of the industry in which he is engaged, the number of men employed, the estimated pay roll for the succeeding six months and the rate fixed by the Board for such particular class; and the employer is then given the right to deduct from the wages of his employés such weekly or monthly amounts as in the six months period will aggregate 10% of the amount so paid by the employer into the State Insurance Fund. Receipts and forms will be furnished employers by the Board.

(B) The date, January 1, 1912, fixed in the foregoing section as the time for the going into effect of the act, is directory and not mandatory. Therefore, the act did not go into full operation until the rates of insurance were "determined and published" by the Board, which was done on February 29th, 1912. (See note to Section 17.) As no employer could have availed himself of the provisions of the law until March 1, 1912, it is clear that he could not be deprived of the common-law defenses in any action brought by an employé for an injury occurring at any time prior to that date. (Opinion of Attorney-General Hogan, January 8, 1912.)

(C) This section provides that the employer who has elected to accept the provisions of this act shall pay the premiums of liability risk in the classes of employment as may be "determined and published" by the State Liability Board of Awards. The method of publication is not prescribed by the law. In an opinion

rendered to the Board by Attorney-General Hogan on March 6th, 1912, it is held that it is not necessary to make such publication in a newspaper, and that sufficient publication has been made if it is made known through the press that the Board has established its rates, and that the same may be had upon application. The Attorney-General, in his opinion, also suggests that it would be a proper means of publication to have the classifications and rates published in a rate book for distribution, and this is now being done.

(D) Frequent inquiry is made of the Board as to whether the employer is required by law to collect from his employés ten per cent. of the premium paid by him into the State Insurance Fund. The employer is given the right to collect the ten per cent. from his employés, but may waive that right if he so desires, as the collection of the ten per cent. is no part of the election of the employé to accept the provisions of the act. The employé's election is made irrevocably when he continues in his employment after the posting of the notices required in Section 20-1.

(E) The words "employés in this state," as used in this section, should be construed to mean employés whose contracts of service are made in this state. If the contract of service is made in Ohio, it matters not where the injury has occurred, providing it was sustained in the course of employment. (See Section 20-1, Note (D).)

(F) The inquiry is frequently made as to how an employer who once elects to become a subscriber to the State Insurance Fund shall proceed in the event he desires to no longer contribute. The first contribution made to the fund protects the employer and provides compensation for his employés for the period of six months from the day following the date of the contribution. Protection ceases at the end of the six-months period, and unless the employer continues to make his payments, he is automatically dropped. In other words, the employer goes out of the protection of the law by simply failing to make his payments.

(G) The Board is frequently asked whether a principal who sub-lets work to an independent contractor should subscribe to the fund in order to be protected from injuries occurring to the employés of the independent contractor. The subject of "independent contractor" is in itself a branch of the law which could be made the subject of an extensive treatise, and we shall content ourselves by stating that the Workmen's Compensation Law has in no wise changed the law as to independent contractors. In other words, if the principal would, under the general law governing this subject, be liable for injuries resulting to the employés of independent contractors, it would be necessary for him to subscribe to the State Insurance Fund in order to be protected; otherwise, not. A clear

case of the non-liability of the principal would be where the employer employs workmen who do what is generally known as "piece work," the employés working in shops or rooms which they provide for themselves, or at their homes, and not under the supervision or control in any way of the employer. Neither such employés who contract directly with the principal to do such piece work, nor any persons they might employ to assist them would come under the terms of the act, and neither would have a claim on the principal in case of injury. (Opinion of Attorney-General Hogan, March 8, 1912.) A different rule would apply, however, in cases where the principal furnishes the place to work, the machinery and tools with which to work and the materials from which the finished product is made, and retains a general supervision over the conduct of the workmen. In such instance, we believe that the principal owes a duty to furnish a safe place in which to work, safe machinery, etc., and that he would be liable for any injury occurring to the employés of the independent contractor occasioned by negligence of the principal or any of his officers, agents or employés, either in furnishing a safe place in which to work or in furnishing proper machinery, tools, etc., and so in order to be protected should be a subscriber to the fund.

(H) The manner of the election of the employé has already been described. (See note (F) under Section 20-1.)

(I) The ten per cent. which the employer is authorized by this section to collect from his employés is not ten per cent. of the employés' wages, but ten per cent. of the amount of the premium paid by the employer. This seems to be so clear as to require no explanation, but we find many persons have the erroneous opinion that it is ten per cent. of the employé's wages that the employer is entitled to retain. To illustrate, if the rate of premium charged the employer is $1.00 per $100.00 of wages paid, the employer would have the right to collect from his employés 10 cents for each $1.00 of premium paid, i. e., 10 cents for each $100.00 of wages paid the employés which would be one-tenth of one per cent. of the employés' wages, or for an employe earning $10.00 per week, the amount to be deducted from his wages would be just one cent per week.

Sec. 21. The state liability board of awards shall disburse the state insurance fund to such employés of employers as have paid into said fund the premiums applicable to the classes to which they belong, that have been injured in the course of their employment, wheresoever such injury has occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued.

Note by the board.—By the provisions of this section, the State lity Board of Awards is required to compensate injured em- s for all injuries received by them in the course of their em- ient and wheresoever such injuries have occurred, or their dents in case death has ensued, excepting such injuries as may have been purposely self-inflicted. The question of negligence, or whether the injury was occasioned by the fault of the employer, or any of his foremen or by any fellow employé, or as the result of defective machinery, etc., will not be considered by the Board. It is simply required to determine whether in fact any injury was sustained, and if so, whether it was incurred in the course of employment.

Sec. 21-1. All employers who employ five or more workmen or operatives regularly in the same business, or in or about the same establishment, who shall not pay into the state insurance fund the premiums provided by this act, shall be liable to their employés for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employés, and also to the personal representatives of such employés where death results from such injuries and in such action the defendant shall not avail himself or itself of the following common-law defenses:

The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence.

Note by the board.—See note to Section 20-1.

Under this section, employers who do not contribute to the State Insurance Fund are deprived of the common-law defenses, and are liable to respond in damages for death or injury caused by the wrongful act, neglect or default of the employer; or any of the employer's "officers, agents or employés." The words "wrongful act, neglect or default," as used in this section, include all degrees of negligence, including what is sometimes referred to as "wilful negligence," but the term "wrongful act" is not used in the same sense as the term "wilful act" in Section 21-2. (Opinion of Attorney-General Hogan, April 4, 1912.) The only defense available to the employer under this section, where the question of injury itself

is undisputed, is that the injury was occasioned solely by the negligence of the injured employé.

Sec. 21-2. But where a personal injury is suffered by an employé, or when death results to an employé from personal injuries while in the employ of an employer in the course of employment, and such employer has paid into the state insurance fund the premium provided for in this act, and in case such injury has arisen from the wilful act of such employer or any of such employer's officers or agents or from the failure of such employer, or any of such employer's officers or agents, to comply with any municipal ordinance or lawful order of any duly authorized officer, or any statute for the protection of the life or safety of employés, then in such event, nothing in this act contained shall affect the civil liability of such employer, but such injured employé, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury, and such employer shall not be liable for any injury to any employé, or to his legal representative in case death results, except as provided in this act.

Every employé, or legal representative in case death results, who makes application for an award from the state liability board of awards, waives his right to exercise his option to institute proceedings in any court. Every employé, or his legal representative in case death results, who exercises his option to institute proceedings in court as provided in section 21-2, waives his right to any award; except as provided in section 36 of this act.

Note by the board.—See notes to Sections 20-1, 20-2 and 21-1.

(A) The term "wilful act," as employed in the above section, is not synonymous with the expression "wilful neglect," or "wilful negligence," nor is it used in the same sense as the expression "wrongful act," as used in Section 21-1. The term "wilful act" must necessarily mean something intentionally done, not something omitted to be done, and therefore, has reference to an act deliber-

ately and intentionally done, which is a direct and proximate cause of injury to the employé. (Opinion of Attorney-General Hogan, April 4, 1912.)

(B) This section designates certain injuries which constitute an exception to the provision of Section 20-1, to the effect that the employer who has paid into the State Insurance Fund the premiums of insurance fixed by the Board shall not be liable to respond to damages at common-law or by statute for injuries or death of any of his employés. There were two reasons for including the provisions of this section in the act. The first was that every person is given the right by the constitution of the State of Ohio to enter the courts and maintain a civil action against any other person who has done him an injury in his lands, goods, person or reputation. Therefore, an employé injured by the wilful act of his employer, or his employer's officer or agent, could not be deprived of his right to sue by an act of the legislature, and the whole law would have probably been rendered unconstitutional had not the provisions of this section, with reference to the "wilful act," been inserted.

The other reason was one founded upon public policy. The state having passed many statutes requiring the safeguarding of machinery, etc., for the protection of the life and safety of employés, it would be an unwise policy for the state to enact any law by which it would either itself absolutely insure employers against the consequences of the violation of such laws, or permit any one else to effect such insurance. However, by giving the injured employé the option of resorting to the State Insurance Fund in the class of injuries mentioned in Section 21-2, thus giving to the injured employé, or the dependents of a killed employé, an opportunity to obtain compensation, very soon after the injury, and without trouble or expense, the state has gone a long way toward covering all of such injuries by its plan of state insurance. As a matter of fact, it is expected that practically all injured employés, who would under this section have the option of suing in court, will resort to the State Insurance Fund instead, so that the state plan of insurance is much more complete than any plan of insurance which can be lawfully written by the insurance companies.

(C) Special attention is called to the last paragraph of the above section. While the provisions of this paragraph seem to be clear and should require no explanation, an impression has been created in the minds of many persons, to the effect that the injured employé may file his claim with the State Liability Board of Awards, and if dissatisfied with the award, may refuse to accept same, and then enter suit in court against his employer. This impression is entirely erroneous, as it is clearly provided that any employé "who makes application for an award" thereby waives any right he may have had to sue in court, so that the mere filing of the application

is a bar to any proceedings in court. On the other hand, the mere filing of a suit in court against the employer bars the injured employé from thereafter resorting to the State Insurance Fund for compensation. (See note to Section 36; also reference to opinion of Attorney-General Hogan of April 4, 1912, in prefatory note, under the head of "State Insurance Preferable to So-called Employers' Liability Insurance".)

(D) The statutes containing provisions for the protection of the life and safety of employés, and also statutes regulating the employment of minors and females, etc., are printed for free distribution and may be had upon application to Hon. Thomas P. Kearns, Chief Inspector of Workshops and Factories, Columbus, Ohio.

Sec. 22. (There is no section in the act corresponding to this number.)

Sec. 23. The board shall disburse and pay from the fund for such injury, to such employés, such amounts for medical, nurse and hospital services and medicines, as it may deem proper, not, however, in any case, to exceed the sum of two hundred dollars, in addition to such award to such employé.

Note by the board.—While it is the purpose of the law to pay for all medical, nurse and hospital services and medicines reasonably required by the injured employé, the only limitation being that this shall not exceed $200.00, the object of the Board will be to confine such payments to reasonable and necessary expenditures. This will be done by the Chief Medical Examiner, who has prepared a medical and hospital fee bill containing a schedule of charges which will be considered reasonable by the Board, and in this way, the Board expects to effectually prevent payment of extravagant claims for such services.

Sec. 24. In case death ensues from the injury reasonable funeral expenses, not to exceed one hundred and fifty dollars, shall be paid from the fund, in addition to such award to such employé.

Sec. 25. No benefit shall be allowed for the first week after the injury is received, except the disbursement provided for in the next two preceding sections.

Note by the board.—The injured employé bears the loss occasioned by his inability to work for the first week after receiving an

injury. The law thus adopts a rule which prevails in all benevolent orders and benefit societies.

Sec. 26. In case of temporary or partial disability, the employé shall receive sixty-six and two-thirds per cent. of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week, if the employé's wages were less than five dollars per week, then he shall receive his full wages; but not to continue for more than six years from the date of the injury, nor to exceed three thousand four hundred dollars in amount from that injury.

Note by the board.—This section provides compensation for the injuries wholly disabling employés for a temporary period, and also for partial disability for a temporary period, the award to be determined by the impairment of the earning capacity of the employé, and not altogether by the nature of the injury itself. There is no specific provision in the law for injuries permanent in character resulting in partial disability, such as the loss of an eye or a member. Compensation for such injuries are made under this section. The "average weekly wage" is taken as the basis for awards in all cases of injury. (See Sections 31 and 32 and notes.)

Sec. 27. In case of permanent total disability the award shall be 66 2-3% of the average weekly wage, and shall continue until the death of such person so totally disabled, but not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollar per week; if the employé's wages were less than five dollars per week, then he shall receive his full wages.

Note by the board.—This section provides for compensation for permanent total disability only. (See Sections 31 and 32 and notes).

Sec. 28. In case the injury causes death within the period of two years the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the insurance fund shall be limited to the expense provided for in sections 23 and 24.

2. If there are wholly dependent persons at the

time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wage and to continue for the remainder of the period between the date of the death and six years after the date of the injury, and not to amount to more than a maximum of thirty-four hundred dollars, nor less than a minimum of one thousand five hundred dollars.

3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wage and to continue for all or such portion of the period of six years after the date of the injury as the board in each case may determine, and not to amount to more than a maximum of thirty-four hundred dollars.

Note by the board.—This section provides for awards to be made in case of death by injury. It very wisely makes a distinction between killed employés, leaving no dependents, and those who leave dependents surviving, and it also makes a distinction between those wholly dependent and those partly dependent upon the deceased employé, and gives the Board a wide discretion in determining as a matter of fact whether there are dependents, and if so, whether they are wholly or partly dependent.

Sec. 29. The benefits, in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents, as may be determined by the board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the board deem proper, and shall operate to discharge all other claims therefor.

Note by the board.—This provision will, in many instances, obviate the necessity of the expense attendant upon the appointment of guardians of infants and other persons under legal disability, and of administrators.

Sec. 30. The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims

upon the decedent for support, in compliance with the finding and direction of the board.

Sec. 31. The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

Note by the board.—"My opinion is that Section 31 is a general section providing the basis upon which to compute the benefits payable on account of any injury to an employé, whether death results from such injury or not, and that by 'earning capacity' is meant the 'average weekly wage', except in such cases as are provided for by Section 32 of the act, where the injured employé was of such age and experience that under natural conditions his wages would be expected to increase. Where these conditions exist, then, and then only, is it important for your Board to ascertain what the earning capacity of such employé is." (Opinion of Attorney-General Hogan, January 11, 1912.)

See Sections 26 and 32 and notes.

Sec. 32. If it is established that the injured employé was of such age and experience when injured as that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage.

Note by the board.—"The only way by which you can arrive at the 'average weekly wage' referred to in Section 32, would be to ascertain what the weekly wages of the employé were at the time of the injury, his physical condition, the nature of work in which he was employed, his intelligence, his age, and, as there is no definite rule laid down in any of the authorities as to a case of this kind, any other particular fact that in the given instance would assist you in arriving at your conclusion as to the extent to which his wages could reasonably be expected to be increased." (Opinion of Attorney-General Hogan, January 11, 1912.)

See Sections 26 and 31 and notes.

Sec. 33. The power and jurisdiction of the board over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion, may be justified.

Note by the board.—This is a very wise provision of the Act, as it will enable the Board to guard against the imposition of those

who feign injury and will enable the Board to rectify any error of judgment which it may have made in awarding too large or too small a sum to an injured employé.

Sec. 34. The board, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

Note by the board.—The power here given to the Board will, as a matter of policy, be seldom exercised, as in practically all cases, it is better for the beneficiaries to receive the award to which they are entitled in installments at stated intervals, rather than in a lump sum. The reasons for this are obvious.

Sec. 35. Benefits before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to such employés or their dependents.

Note by the board.—The Board will follow strictly the rule established in this section. No orders will be accepted, or assignments recognized for any portion of the award made to an injured employé. But payments may be made by the Board directly to the persons rendering the services to injured employés enumerated in Sections 23 and 24.

Sec. 36. The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final.

Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant within thirty (30) days after the notice of the final action of such board may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liabil-

ity board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal.

Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and, if they determine the right in his favor, shall fix his compensation within the limits and under the rules prescribed in this act; and any final judgment so obtained shall be paid by the state liability board of awards out of the state insurance fund in the same manner as such awards are paid by such board.

The costs of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party. Either party shall have the right to prosecute error as in the ordinary civil cases.

Note by the board.—See Section 21-2 and note (C).

The action of the Board is final and no appeal lies therefrom where it determines that an injury has been sustained in the course of employment and fixes the amount and duration of the award. It is only in cases where any relief whatever is denied that an appeal is allowed.

The proceedings to be filed in the Common Pleas Court by the claimant, in the event the State Liability Board of Awards refuses to make him any award, is called an "appeal" in this section, but it is really an original action. As this section fully describes the nature of the action, we deem it unnecessary to discuss the matter at length. It will be noted, however, that the "appeal" provided for in this section is prosecuted in court against the State Liability Board of Awards, and in no event is the employer who contributes to the State Insurance Fund called upon to make any defense or to concern himself in any way as to the proceedings.

The facts necessary to be found by the Board to authorize an award are as follows:

1. That the employer of the applicant was a contributor to the State Insurance Fund at the time of the alleged injury.

2. That the applicant seeking an award was an employé within the meaning of the act at the time of receiving the alleged injury.

3. That an injury was in fact sustained.

4. That such injury was sustained while in the course of his employment.

5. That such injury incapacitated him either wholly or partially for a longer period of time than one week.

6. That no suit has been brought or attempted to be brought in any court by the injured employé prior to filing his claim with the State Liability Board of Awards.

The finding by the Board of the non-existence of any of the facts above enumerated would result in the denial of an award, and in such case an appeal is allowed, as provided in this section.

Sec. 36-1. Such board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided; but may make the investigation in such manner as in their judgment, is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Sec. 37. The board may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section 17. The salaries and compensation of the secretary, and all actuaries, accountants, inspectors, examiners, experts, clerks and other assistants, and all other expenses of the board herein authorized including the premium to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers, signed by two of the members of such board, presented to the auditor of the state, who shall issue his warrant therefor as in other cases.

Sec. 38. No provision of this act relating to the amount of compensation shall be considered by, or called to the attention of the jury on the trial of any action to recover damages as herein provided.

Sec. 39. Annually on or before the 15th day of November, such board, under the oath of at least two of its members, shall make a report to the governor which shall include a statement of the number of awards made by it, and a general statement of the causes of the

accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the expense fund, and the condition of its respective funds, together with any other matters which such board deems it proper to call to the attention of the governor, including any recommendations it may have to make.

Sec. 40. The expense of such board in carrying out the provisions of this act shall be paid until January 1, 1912, out of the general revenue of the state not otherwise appropriated. Such expense shall not exceed twenty-five thousand dollars in addition to the salaries of members of such board.

Sec. 41. The expenses of such board in carrying out the provisions of this act shall be paid from January 1st, 1912, to January 1st, 1913, out of the general revenue fund of the state not otherwise appropriated. Such expense shall not exceed one hundred thousand dollars in addition to the salary of the members.

§ 172. The decision of the Supreme Court of Ohio sustaining the law.—The Ohio Insurance Fund Act is sustained by the supreme court of that state, as a valid exercise of legislative power and not repugnant to the federal or state constitution in an able opinion by Mr. Justice Johnson, which is concurred in by the entire bench. The opinion is rendered in the case of State ex rel. Yaple v. Creamer,[4] and reads as follows:

"Johnson, J.: The statute in question provides for the creation of a state liability board of awards, which shall establish a state insurance fund, from premiums paid by employers and employés in the manner provided in the act. It provides a plan of compensation for injuries, not wilfully self-inflicted, resulting from accidents to employés of employers, both of whom have voluntarily contributed to the fund in the proportion of 10 and 90 per

[4] —— Ohio St. ——, 97 N. E. 602.

cent. respectively. It applies only where the employer has five or more operators regularly in the same business in or or about the same establishment. An employer who complies with the act is relieved from liability to respond in damages at common law, or by statute, for injury or death of an employé who has complied with its provisions, except when the injury arises from the wilful act of himself or officer or agent, or from failure to comply with any law or ordinance providing for protection of life and safety of employés, in which event the employé or his representatives have their election between a suit for damages and a claim under the act. Employers of five or more who do not pay premiums into the fund are deprived in actions against them of the common-law defenses of the fellow-servant rule, the assumption of risk, and of contributory negligence. Where the parties are operating under the act, the injured employé and his dependents in case of death are compelled to accept compensation from the insurance fund in the manner provided, except in the cases above set forth.

"The objections to the validity of the act are stated by different counsel at the bar, and in their briefs, under various heads. All of them are substantially comprised in the following: First. That it is an unwarranted exercise of the police power and directs the state to use public funds for private purposes. Second. That sections 20-1 and 21-1 take private property without due process of law in contravention of sections 15, 16, and 19, art. 1, of the Constitution of Ohio, and the fourteenth amendment to the Constitution of United States, in that it deprives employers of the defense of assumption of risk, and deprives the employé of part of his wages to be paid to the state insurance fund, of the right to sue for injuries sustained, of recourse to the courts, and of a trial by jury. Third. That it deprives parties of the freedom of contract and impairs the obligations of contracts. Fourth. That it makes an unjust and arbi-

trary classification and does not affect all who are within its reason.

Sections 20-1 and 21-1 are as follows, viz.:

"Sec. 20-1. Any employer who employs five or more workmen or operatives regularly in the same business or in or about the same establishment who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employé, wherever occurring, during the period covered by such premiums, provided the injured employé has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice, shall be deemed a waiver by the employé of his right of action as aforesaid. Each employer paying the premiums provided by this act into the state insurance fund shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such payments; and the same, when so posted, shall constitute sufficient notice to his employés of the fact that he has made such payment; and of any subsequent payments he may make after such notices have been posted.

"Sec. 21-1. All employers who employ five or more workmen or operatives regularly in the same business, or in or about the same establishment who shall not pay into the state insurance fund the premiums provided by this act, shall be liable to their employés for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents, or employés, and also to the personal representatives of such employés where death results from such injuries and in such action the de-

fendant shall not avail himself or itself of the following common-law defenses:

"The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence."

"The law was passed after a report referred to in the briefs, of a commission appointed by the governor, in obedience to a statute passed for that purpose. The report was prepared after an exhaustive research into industrial conditions in many countries, and an examination of laws, which have been passed in the effort to improve such conditions. Substantially its conclusions are, that the system which has been followed in this country, of dealing with accidents in industrial pursuits, is wholly unsound, that there is an intelligent and widespread public sentiment which calls for its modification and improvement, and that the general welfare requires it. That there has been enormous waste under the present system, and that the action for personal injuries by employé against employer no longer furnishes a real and practical remedy, annoys and harasses both, and does not meet the economic and social problem which has resulted from modern industrialism. Conceding the desirability of improvement, of legislative and governmental action, and the good results in other countries which has no written constitution to limit the legislative power, we in this country have the problem of devising a plan which shall not infringe the fundamental law.

"It is apparent, from a contemplation of the whole enactment and its scope and purpose, as well as of the participation of the state in its administration, that it must find its validity, if at all, in the police power of the state.

"There is now (it can be fairly said) general concurrence in the meaning of the term "police power" and as to its extent.

Professor Freund in his work says at section 2:

"The term 'police power' has never been circumscribed. It means at the same time a power and function of government, a system of rules and an administrative organization and force."

"And in section 3, after discussing its nature, and aims, he says:

"It will reveal the police power not as a fixed quantity, but as the expression of social, economic and political conditions. As long as these conditions vary, the police power must continue to be elastic, i. e., capable of development."

In State, ex rel Monnett, v. Pipe Line Company, 61 Ohio St., 520, as to the constitutionality of the Ohio anti-trust law, it is said:

"The definite proposition of counsel upon this point is that although the act is the exercise of legislative power, it transcends the provisions of the state and federal constitutions, which render inviolable the rights of liberty and property, which include the right to make contracts. It would be difficult to place too high an estimate upon these guaranties, and they include the right to make contracts. But it is settled that these guaranties are themselves limited by the public welfare for the exercise of the police power."

In Phillips v. State, 77 Ohio St., 216, it is said:

"It is almost an axiom that anything which is reasonable and necessary to secure the peace, safety, morals and best interests of the commonwealth may be done under the police power; and this implies that private rights exist subject to the public welfare. These principles are plainly recognized in Article XIV, Section 1, of the Constitution of the United States, and Article I, Section 19, of the Constitution of Ohio."

The case of Noble State Bank v. Haskell, 219 U. S., 104, and Assaria State Bank v. Dolley, 219 U. S., 121, involved the constitutionality of laws enacted by Oklahoma and Kansas, in the exercise of the police power to

establish bank depositors guaranty funds created by levy on each of the banks. Objection was made that the tax was an appropriation of the property of one bank to pay debts of another without due process of law.

Mr. Justice Holmes said:

"The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. * * * Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. * * *

"It may be said in a general way that the police power extends to all the great public needs (Camfield v. United States, 167 U. S., 518). It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

"We think it clear that the objects and purposes as above set forth, which the legislature contemplated in the passage of the law in question, are sufficient to sustain the exercise of the police power, and the participation of the state in the manner provided. Whether the plan adopted is the most appropriate or best calculated to accomplish those objects are matters with which the court is not concerned, and the law should not be held to be invalid unless clearly in violation of some provision of the Constitution.

"It is urgently insisted that while the law is apparently permissive and leaves its operation to the election of employers and employés, it is really coercive and upon this premise much persuasive argument against the validity of the law is based. This is an important question in the case.

"An examination of the sections touching the questions made is here necessary. After providing in section 20-1 that an employer who elects to comply with the act shall be relieved from liability to the employé at common law, or by statute (except as provided in section 21-2), it is then enacted in section 21-1: All employers who shall not pay into the insurance fund, * * * shall be liable to their employés for damages, * * * caused by the wrongful act, neglect or default of the employer, his agents, etc., and in such cases the defenses of assumption of risk, fellow-servant, and contributory negligence are not available. So that an employer who elects not to come into the plan of insurance may still escape liability if he is not guilty of wrongful act, neglect, or default. His liability is not absolute as in the case of the New York statute hereinafter referred to. And it can not be said that the withdrawal of the defenses of assumption of risk, fellow-servant and contributory negligence as against an employer who does not go into the plan, is coercive, for such withdrawal is in harmony with the legislative policy of the state for a number of years past. The law known as the Norris law passed in 1910, withdrew these defenses in the particulars covered by the law.

"As to the employé, if the parties do not elect to operate under the act, he has his remedy for the neglect, wrongful act or default of his employer and agents as before the law was passed, and is not subject to the defenses named. If the parties are operating under the act the employé contributes to an insurance fund for the benefit of himself or his heirs, and in case he is injured or killed, he or they will receive the benefit even though his injury or death was caused by his own negligent or wrongful act, not wilful. And that is not all. Under section 21-2 if the parties are operating under the act and the employé is injured or killed, and the injury arose from the willful act of the employer, his officer or agent,

or from failure of the employer or agent to comply with legal requirements, as to safety of employés, then the injured employé or his legal representative has his option to claim under the act or sue in court for damages.

"Therefore, the only right of action which this statute removes from the employé is the right to sue for mere negligence (which is not wilful or statutory) of his employer, and it is within common knowledge that this has become in actual practice a most unsubstantial thing.

"It is conceded by counsel that the particulars named in section 21-2 are such as form the basis for a large portion of claims for personal injuries. Many employers may elect to remain outside its provisions; it would not be strange if many do so. On the other hand some workmen may feel disposed to do likewise in spite of what would seem to be to their manifest advantage in securing the benefits of the insurance. However, if there should be such general acceptance of and compliance with the statute as its framers hope for, so as to bring a large part of the labor employed in the industrial enterprises of the state within its influence and operation, that would not demonstrate its coercive character. On the contrary it would justify the enactment. Naturally time and experience will disclose imperfections and inefficiencies in the plan; but if it should prove to be feasible, and appropriate in a general way, these imperfections can be corrected by the legislature. On account of the common law and statutory rights still preserved to the parties by this statute (as we have pointed out) in cases where the election is made to come under its provisions as well as not to do so taken in connection with the advantage to each which the plan contemplates, we can not say that the statute is coercive. As was said in the Wisconsin case: 'Laws can not be set aside upon mere conjecture or speculation. The court must be able to say with certainty that an unlawful result will follow.' We do not see how any such

thing can be said here. Every consideration of prudence and self-interest (things not easily associated with compulsion and coercion) would seem to lead an employé to voluntarily make the contribution and waiver contemplated.

"[2] Second. Does this statute take private property without due process of law and deny the guarantee of the Constitution as claimed?

"Perhaps no exact definition of "Due process of law" has been agreed on. Judge Story defines it in his work on the Constittuion (Section 1935): 'The right to be protected in life, and liberty and in the acquisition of property under equal and impartial laws, which govern the whole community. This puts the state upon its true foundation for the establishment and administration of general justice, justice of law, equal and fixed, recognizing individual rights and not impairing them.' In Cooley on Const. Limit., Sec. 356, it is said: 'Due process of law in each particular case, means such an exercise of the government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the classes of cases to which the one in question belongs.'

"The case of Ives v. South Buffalo Ry. Co., 201 N. Y., 276, 94 N. E. 431, 34 L. R. A. (N. S.) 162 (relied on by some of counsel), involved a statute different in many essentials from the Ohio law. Its controlling feature was that every employer engaged in any of the classified industries should be liable to a workman for injury arising in the course of the work by a necessary risk inherent in the business whether the employer was at fault or not and whether the employé was at fault or not, except when its fault was wilful. The court held the law invalid, as imposing the ordinary risk of a business (which under the common law the employé was held to assume) on the employer. The

court states one of the premises on which it proceeds as follows: "When our constitutions were adopted, it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another." But that rule was not of universal application. At common law one may sustain such relation to the inception of an undertaking that he will be held liable for negligence in the progress of the enterprise, even though he have no part or connection with the negligent act itself which caused the injury. Such, for instance, as where the owner of property contracts with an independent contractor to do work which, though entirely lawful, yet has inherent probabilities of harm if negligently performed. The position in the line of causation which employers sustain in modern industrial pursuits is of course the basic fact on which employers' liability laws rest.

"As to the right to abolish the defense of assumption of risk, it is enough to say here that the great weight of authority is against the New York position and the position of such of the counsel in this case as insist on that rule. Some of counsel appearing against the validity of this law, concede the right to abolish the defenses referred to. The supreme courts of Massachusetts, Wisconsin and Washington have recently held in cases sustaining the validity of statutes similar to the one here attacked, that it is within the legislative power to abolish the defense referred to. In re Opinion of Justices, 96 N. E. Rep. 308 (Mass.); Borgnis v. Falk Co., 133 N. W. Rep. 209 (Wis.); State, ex rel., v. Clausen, 117 Pac. 1101 (Washington).

"Since the argument of this case the Supreme Court of the United States has decided the case of Mondou v. N. Y., N. H. & H. Ry. Co., 223 U. S. 1, 32 Sup. Ct. 169, 56 L. Ed. ——, and has sustained the constitutionality of the employers liability law passed by Congress

The abolition of these rules was urged as an objection to the law. The court say: 'Of the objection to these changes it is enough to observe: First. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will * * * of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. Munn v. Illinois, 94 U. S. 113, 134 (24 L. Ed. 77); Martin v. Pittsburg & Lake Erie R. R. Co., 203 U. S. 284, 294 (27 Sup. Ct. 100, 51 L. Ed. 184); The Lottawanna, 21 Wall. 558, 577 (22 L. Ed. 654); Western Union Telegraph Co. v. Commercial Milling Co., 218 U. S. 406, 417 (31 Sup. Ct. 59, 54 L. Ed. 1088).'

"The recent case of State v. Boone, 84 Ohio St. 346, 95 N. E. 924, is cited as indicating limitations of the police power which apply here. The act involved in that case required the physician in attendance on a case of confinement to investigate and certify without compensation to certain facts which would not naturally come within the knowledge of the attending physician, and as to matters wholly outside the scope of his professional duty. The court held the statute unconstitutional as to physician and midwife because of an unreasonable and arbitrary exercise of the police power. That was the proposition of law decided in that case, and no other proposition was decided. The court was careful to point out in the opinion and also on motion for rehearing that the state might require the physician to report to proper authority facts which would come naturally under his observation in the line of his duty without compensation. Other matters referred to in

the opinion were not included in the syllabus which stated the law decided by the court.

"The court remarks that the police power inheres in the sovereignty. Its foundation 'is the right and duty to provide for the common welfare of the governed.' Manifestly the reasoning which led to the conclusion in that case that the statute had been passed by an unreasonable exercise of the police power can have no application here.

"State ex rel., v. Hubbard, 22 C. C. 253, affirmed without opinion, 65 Ohio St. 574, and State, ex rel., v. Guilbert, 56 Ohio St. 575, involving the validity of statutes creating a teachers pension fund and the Torrens law to establish an insurance fund for the protection of land titles concerned laws which were wholly compulsory with no element of choice and were not claimed to have been passed under the police power to cure undesirable public conditions but for mere private benefit. These cases can therefore have no relation to a plan adopted to promote the general welfare, the contributions to which are made after an election by the parties to participate in the undertaking.

"It is urged by counsel opposing this law that the case of Byers v. Meridian Printing Co., 84 Ohio St., 408, is of conclusive weight condemnatory of the legislation we are examining. In that case it is ruled that an amendment to section 5094, Revised Statutes (changing the presumption of malice and burden of proof in action for libel where retraction is made on demand, in the manner stated), is unconstitutional. The decision was put on the ground that plaintiff was guaranteed his remedy by due course of law for an injury done in his land, goods, person or reputation, under Article I, Section 16, Constitution of Ohio. When the injury was done to the reputation of plaintiff by the libel, he was entitled to his constitutional remedy at law, but at the same time he was enitled to demand of the publisher a retraction or

the libel. Therefore the legislature had no right to put him on his election as to two courses both of which he was entitled to follow. The court is careful to declare that it is not disposed to question that a citizen may waive a constitutional right. But being compelled to elect between two rights, both of which a person is entitled to, has no resemblance to waiver. And under the law under investigation here as already shown, the right of action (for injury by wilful act of the employer and for his failure to comply with requirements as to the safety of employés) is still reserved to the employés. So that the only thing withdrawn by this law, and to which withdrawal he consents by his voluntary election to operate under the law, is his right of action for mere negligence, and in place of it he receives the substantial protections and privileges under the state insurance fund." * * *

"The court then shows that many boards hear and determine questions affecting private as well as public rights, and quotes with approval from State, ex rel., v. Harmon, 31 Ohio St., 250: 'The authority to ascertain facts and apply the law to the facts when ascertained pertains as well to other departments of government as to the judiciary.' These principles were applied in France v. State, 57 Ohio St., 1, 47 N. E. 1041, in which case the court remark that the case of State, ex rel., v. Guilbert, 56 Ohio St. 576, 47 N. E. 551, 38 L. R. A. 519, 60 Am. St., Rep. 756, forms no exception, for the powers of the recorder under the statute there in question were essentially those which properly belong to a court.

"Does the law deny recourse to the courts and trial by jury? How does it affect an injured employé where the parties are operating under the act?

"In B. & O. Rd. Co. v. Stankard, 56 Ohio St. 232, 46 N. E. 577, 49 L. R. A. 381, 60 Am. St. Rep. 745, which was a suit by the beneficiaries of a member of the relief department of the railroad, the company answered set-

ting up a rule which provided that the decision of the relief department should be final. The court say: 'The right to appeal to the courts for redress of wrongs is one of those rights which in its nature under our Constitution is inalienable and can not be thrown off or bargained away.' But the court shows that parties may contract to submit the fixing of facts to some non-judicial tribunal and say: 'In insurance, and other like cases, where the ultimate question is the payment of a certain sum of money, certain facts may be fixed by a person selected for that purpose in the contract, but the ultimate question as to whether the money shall be paid or not may be litigated in the courts, and a stipulation to the contrary is void.' So that under that rule the parties may conclusively bind themselves in advance to submit questions of amount, etc., to some tribunal other than a court; but the ultimate question of actual liability can not be removed from the courts.

"Now, in this statute, section 36 is as follows: 'Sec. 36. The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final. Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund * * * upon any * * * ground going to the basis of the claimant's right, then the claimant within thirty (30) days after the notice of the final action of such board may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liability board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal. Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant.' There-

fore, if the board denies the claimant's right to participate in the fund on any ground going to the basis of his claim, he may by filing an appeal and petition in the ordinary form be entitled to trial by jury; the case proceeding as any other suit.

"It is not an appeal in the sense of appealing from one court to another, but is really the beginning of an original suit. As to this it must be remembered that the whole proceeding is with and against the board of awards. His claim is not against the employer. There is no dispute between them. His claim is for the benefits of the insurance fund. The board of awards inquire into the matters pointed out in the statute, and in case of dispute as to whether there is any ultimate right to 'participate at all in such fund' he has his recourt to the courts. But he is not confined to that method of proceeding. If he claims that the injury was caused by the wilful act of the employer or officer or agent or from failure to comply with legal requirements as to safety of employés, etc., he may waive his claim under the act and sue in court for his damages. But in his petition in such case he could not claim damages for mere negligence; he having elected to waive that cause of action, having elected, as it were, to assume the risk of his employer's mere neglect in return for the benefits and protection to himself and his heirs afforded by the terms of the act.

"[4] Another objection that is urged against this statute is, that it makes an unjust and arbitrary classification and does not affect all who are within its reason as required by Section 26, Article II, of Constitution of Ohio. Under the law only employers of five or more are affected by it.

"Spear, J., in Cincinnati v. Steinkamp, 54 Ohio St., 295, remarked: 'In order to be general and uniform in operation, it is not necessary that the law should operate upon every person in the state, nor in every locality; it is sufficient, the authorities concede in holding, if

it operates upon every person brought within the relation and circumstances provided for, and in every locality where the condition exists.' To same effect are Platt v. Craig et al., 66 Ohio St. 75, 63 N. E. 594; Gentsch, v. State, ex rel., 71 Ohio St. 151, 71 N. E. 900; Ry. Co. v. Hosterman, 72 Ohio St. 107, 63 N. E. 1075.

"We think the classification is reasonable and proper. In the nature of the case the risks of any regular employment are less and the opportunity for avoiding them better where an employé is one of four than when the number is larger. As was said by Winslow, C. J., in Borgnis v. Falk, supra: 'The difference in the situation is not merely fanciful; it is real.' St. Louis Cons. Coal Co. v. Illinois, 185 U. S., 203, 22 Sup. Ct. 616, 46 L. Ed. 872, is a case in which a classification was made under somewhat similar manner, and was upheld. Nor do we think it an objection that the law applies only to workmen and operatives and not to all others. This classification brings within the law all employés within its reason.

"[5] As to the suggestion that this statute impairs the obligation of contracts it is sufficient to say that it can, of course, not affect contracts in existence and unexpired at the time it is put into operation by the employer.

"It is suggested that this legislation marks a radical step in our governmental policy not contemplated by the Constitution, and which it is the duty of the court to condemn. But it creates no new right or new remedy for wrong done. It is an effort to in some degree answer the requirements of conditions which have come in an age of invention and momentous change. The courts of the country, while firmly resisting encroachments on the Constitutions in the past, have yet found in their ample limits sufficient to enable us to meet the emergencies and needs of our development, and we do not

find that this statute goes beyond the bounds put upon the legislative will.

"The demurrer to the petition will be overruled, and the writ of mandamus awarded.

"Demurrer overruled."

§ 173. Workshop and factory inspection and regulation act.—This statute, which takes the place of an earlier act on the subject, reads as follows:

Section 1. That sections 1003 and 1004 of the general code be amended so as to read as follows:

Sec. 1003. Every manufacturer of the state shall within three days after the happening of any accident in his establishment resulting in death, or bodily injury of such a nature that the person injured does not return to his or her employment in said establishment within two or more days after the occurrence of the accident, forward by mail to the chief inspector of workshops and factories a report containing the following particulars in full:

1. Name and address of manufacturer, (person, firm or corporation).

2. Nature of business in which manufacturer is engaged and place where accident occurred.

3. Name, address, sex, age and kind of employment of person killed or injured and whether such person is married or single.

4. Time of day deceased began work on day of accident, time of day accident occurred, and date of accident or death.

5. At what employed when killed or injured, whether such person was familiar with the work at which engaged or the machinery which he was operating and whether such machinery was in good order and guarded so as to prevent accident under ordinary circumstances. If such machinery was not guarded, reasons for not guarding the same.

6. Description of manner in which such person was killed or injured.

7. Description of nature and extent of injury.

8. Number of persons deprived of support in consequence of such death or injury.

Such manufacturer shall, in all cases of death within six months after the accident, or in case the person injured returns to work in his establishment within six months after the accident, forward by mail to the chief inspector of workshops and factories within five days after such death or such return to work, or in case of no death or return to work within six months, then within five days after the expiration of such six months, a supplemental report which shall contain the following particulars in full:

1. Name and address of manufacturer.

2. Name, sex and age of person injured and date and place where accident occurred.

3. A correct statement of the amount of wages paid to such person at the time of such injury and the amount of wages lost during the period between the time of such accident and the time of forwarding such supplemental report.

4. The amount of compensation paid by such manufacturer by reason of such injury or death, the names of persons to whom such compensation was paid and a statement of reasons for paying such amounts to such persons.

Sec. 1004. Whoever violates or fails to comply with any requirement of the preceding section shall be fined not less than fifty dollars, nor more than one hundred dollars for the first offense, and not less than two hundred dollars nor more than five hundred dollars for each subsequent offense.

§ 174. Rules of procedure before the state liability boards of awards.—

RULE 1.—OFFICE HOURS.

The office hours of the board will be from 8:00 o'clock A. M. to 12:00 o'clock M.; and, from 1:30 o'clock P. M. to 4:30 o'clock P. M.

RULE 2.—SESSIONS OF THE BOARD.

Sessions of the board will be held regularly at the office of the Board on the sixth floor of the Hartman Building, in the City of Columbus, beginning at 10:00 A. M. of each business day, and continuing until the business of the day is completed; provided, that sessions may also be held at any other place within the State should the business to be transacted seem to require it.

RULE 3.—FORMS PRESCRIBED.

Printed forms of all notices, applications, proofs, certificates, etc., necessary for perfecting any claim before the Board will be furnished free of charge by the Board. Such forms must be used in all cases.

RULE 4.—INJURY NOT RESULTING IN DEATH, NOTICE OF.

An employé who has been injured in the course of his employment and who contemplates filing an application for an award, shall, within one week from receiving such injury, notify or cause notice to be given the Board of the time, place and nature of his injury and the name of his employer. Forms of such notices can be obtained from the employer. Such notices should be mailed to "State Liability Board of Awards, Columbus, Ohio."

Upon receiving such notice the Board forthwith will mail to the injured employé proper forms and blanks for his use in perfecting his claim, and notify the employer thereof. Unless such notice is given, no application for an award will be considered by the Board.

RULE 5.—INJURY RESULTING IN DEATH, NOTICE OF.

When death results from an injury received by an employé in the course of his employment, the provisions of Rule 4 shall apply, except that notice of death must be

given by the attending physician, undertaker, employer, executor, administrator or a beneficiary, within one week from the time of death.

RULE 6.—DOCKETING AND NUMBERING.

Notices provided for by Rule 4 and 5 shall be numbered when received by the Board and entered upon a docket kept for the purpose, and each paper thereafter filed in connection with the claim shall be given the same number as the original notice.

RULE 7.—APPLICATION - INJURY.

Application for awards in all cases of injury not resulting in death must be made by the party injured not less than two weeks nor more than three months after the injury is received.

RULE 8.—APPLICATION - DEATH.

Application for awards in all cases of injury resulting in death must be made by the executor, administrator or beneficiary of the deceased, or by the attending physician or undertaker where there is no beneficiary, not less than two weeks nor more than six months after the death of the injured employé.

RULE 9.—MODIFICATION OF RULES.

The provisions of Rules 4, 5, 7 and 8 will not be relaxed unless in the judgment of the Board, the failure to observe their provisions was occasioned by want of knowledge of their existence, and unless their strict enforcement will result in hardship and injustice. In such instances the Board will, upon application, extend the time for filing.

RULE 10.—PROOF.

The proof of all claims shall be made by affidavit as far as possible. But the Board will, if in its judgment it is deemed necessary, require medical or other examinations, and may take oral testimony of witnesses, the claimant being notified of the time, place and manner of taking the same. The Board will also hear any oral tes-

timony offered by an applicant. Depositions of witnesses may also be filed by an applicant, but notice of the time and place of taking the same must be given the Board prior to their taking. Any duly authorized inspector of the Board shall have the right at any time either before or after an award to make an investigation as to the cause and extent of the injury for the purpose of ascertaining facts. The proof in every instance shall be such as to show clearly the jurisdiction of the Board, the rights of the applicant to an award, and the amount thereof.

RULE 11.—DUTY OF CLERK.

The clerk shall keep a record of the time or filing all notices, applications, affidavits, statements, depositions, medical and other forms of proof, and when the proof is seemingly complete, shall enter the same in the order of the completion of the proof upon a separate record to be known as the "Hearing Docket."

RULE 12.—HEARINGS.

Applications for awards will be set for hearing in the order in which they appear on the "Hearing Docket." It shall be the duty of the Clerk to make an assignment of applications, for hearing for each business day one week in advance, and forthwith to notify the applicant by postal card of the time of the hearing. Applicants may appear before the Board either in person or by agent or attorney. If no appearance is made, the application will be heard and disposed of upon the proofs on file, if sufficient, or may be continued until a future day, or indefinitely, for the attendance of applicant or counsel, or for the furnishing of further proof.

RULE 13.—AWARDS.

All awards, other than for medical, nurse and hospital services and for funeral expenses, will be payable in bi-weekly installments. In case of temporary disability or partial impairment of earning capacity, the Board, at the time of making the award, will fix a time at which

payments shall cease, unless the injured employé shall make it appear to the Board that he is still incapacitated as a result of the injury for which the award was originally made. In such case a modification of the terms of the original award may be made.

RULE 14.—PAYMENT OF LUMP SUMS.

Payment of awards in lump sums will be made only when, in a supplemental proceeding, it is made to appear to the Board that it would be to the mutual advantage of the applicant or beneficiaries and to the State Insurance Fund.

RULE 15.—CONTINUANCE.

The policy of the Board will be to determine all questions brought before it as speedily as possible; but continuances of hearings for any reasonable cause may be had upon the request of the applicant.

The Board will continue hearings on its own motion only when the volume of business is such as to demand it, or when the proof is not satisfactory, or is insufficient.

RULE 16.—MODIFICATION OF AWARDS.

The Board, having continuing power and jurisdiction over an award, may make changes or modifications of its former findings, either upon its own motion or upon the application of the beneficiary or beneficiaries. If on its own motion, it must first notify the beneficiary or beneficiaries. Upon application being made for a modification of an award, it shall be docketed and set for hearing as in the case of original applications.

RULE 17.—CHANGES IN RULES.

The rules of the board are subject to alterations or amendments at any time; and the board will make additional rules, whenever, in its judgment, the same are necessary.

§ 175. **Procedure as to employers.**—The steps required to be taken by every employer of five of more workmen or operatives regularly in the same business

in the State of Ohio to obtain the immunities and benefits and avoid the penalties of the act are the following:

First. He should carefully read the rules of procedure before the State Liability Board of Awards which have been prepared by the Board for the guidance of employers and employés affected by the act and notify the Board that he desires to insure under the act.

Second. He should fill out the application for classification of industry and for premiums and the report as to number of accidents and pay roll and send the same to the State Liability Board of Awards at Columbus. These forms are set out in sections 177 and 178.

Third. He should promptly receive in return the premium rate fixed by the Liability Board according to the resolution in note under section 17 of the Compensation Act.

Fourth. He should then pay the premium fixed by the Board and post a copy of the "notice to employés" set out in section 179.

§ 176. Forms of applications and notices to be used by employers covered by the act.—Conformably to section 8 of the act the State Liability Board of Awards has prescribed the forms to be filled out by the employer to avail himself of the provision of the act and likewise the notice to be posted by an employer who has paid the premiums. These forms are set out in the three succeeding sections.

§ 177. Form of application for classification of industry and for premium.

State Liability Board of Awards,
Columbus, Ohio.

The undersigned, ----------
(Individual, firm, partnership or corporation)
an employer of labor in Ohio, and authorized to do business in this State, hereby makes the following declaration for the purpose of enabling the State Liability Board of Awards to determine the classification or classifications of employments in the business conducted by said undersigned, and to fix the rate or rates of pre-

mium therefor, and to name the aggregate amount of premium to be paid to the Treasurer of the State of Ohio as custodian of THE STATE INSURANCE FUND.

It is understood by said employer that if he elects to accept the provisions of the act creating said State Insurance Fund and to pay the premium quoted to him by said State Liability Board of Awards upon the basis of this declaration, that this declaration in its entirety shall, upon said election by said employer, become and constitute his application for the rights and benefits of said fund. It is further understood that the declarations herein contained are made only for the purpose of enabling the Board to quote a correct premium rate.

1 Name of applicant_____

Address _____

(City, street number, etc., where principal office is located)

2

Location of All Places Where Employés Are Employed.	Kind of Business and Different Employments.	Est. Ave. No. Employés in Each Employment.	Est. Total Pay-Roll for Next Six Months.	
_____	_____	_____	$_____	_____
_____	_____	_____	_____	_____

3 The following is a correct statement of the average number of employés employed, and the total pay-roll of the undersigned for the twelve months constituting the business year last preceding this application, ending_____, 191__

Location of All Places Where Employés Are Employed.	Kinds of Business and Different Employments.	Ave. No. Employés in Each Employment.	Total Pay-Roll.	
_____	_____	_____	$_____	_____
_____	_____	_____	_____	_____

4 The foregoing enumeration of employés includes all "workmen or operatives regularly employed in the same business, or in or about the same establishment," in the service of the undersigned in connection with the operation herein described to whom compensation of any nature is paid or allowed. The officers of a corporation, as such, and persons wholly engaged as traveling salesmen, are not included. The members of the STATE LIABILITY BOARD OF AWARDS, or any of its duly authorized employés, shall be permitted to examine the books of the undersigned at any time, so far as they relate to the number or names of workmen or operatives regularly employed, and the compensation earned by them, as above certified and estimated.

5 There are no hand-fed machines used for stamping, punching, pressing, cutting or embossing metal, except as herein stated: _____

_____

6 There is no stevedoring of raw material or supplies—except as herein stated: _____

_____

7 No railroads, switches, or sidetracks, other than by hand-power are operated—except as herein stated: _____

_____

8 No explosives are used, except as herein stated: _____

_____

9 No operations of any nature not herein disclosed are conducted by the undersigned at the places covered hereby—except as herein stated: _____

_____

10 The buildings and structures in which the business of the undersigned is carried on are as follows: _____

_____

(State number, size, and whether frame, brick, stone or concrete.)

_____

_____

_____

There are _____ boilers. Their type is _____

_____

Their age is _____

There are _____ passenger elevators and _____ freight elevators.

Their type is _____

Their maker's name is _____

_____

11 The foregoing statements are true and are made with the understanding that should the classification or classifications, rate or rates and the aggregate amount of premium fixed by the STATE LIABILITY BOARD OF AWARDS under this application be satisfactory to the undersigned when advised of the same, the

undersigned shall then have the option of election to accept the provisions of an Act of the General Assembly of Ohio, entitled "An Act to create a state insurance fund for the benefit of injured, and the dependents of killed employés, and to provide for the administration of such fund by a state liability board of awards," passed May 31, 1911, and approved by the Governor, June 15, 1911.

Said option so to elect, if exercised, will be exercised by the payment to the TREASURER OF STATE, as custodian of the STATE INSURANCE FUND OF OHIO, at his office in the City of Columbus, Ohio, of the sum so designated by the STATE LIABILITY BOARDS OF AWARDS, and such election will date from the first following week-day not a holiday after the day on which such payment is actually received by the Treasurer of State.

12 The statements herein are also made with the understanding that if the pay-roll of the undersigned be greater for the ensuing six months than the estimate herein made, that the premium shall be proportionately increased, and shall be due and payable in the same manner as the original payment, at the end of the six months' period; and, if the pay-roll for such period be less than herein estimated, a proportionate reduction will be made, a credit for the amount of which will be allowed to the undersigned upon the premium for the six months' period next ensuing.

In witness whereof_____have hereunto subscribed
(I or we)
_____name____ and caused our official seal to be affixed,
(my or our) (If a corporation)
this_____day of_____, 191__

_____

Witness: _____

_____

_____

(Seal)

State of Ohio, _____ County, ss:

On this_____day of_____, 191__, before me, a _____in and for said county appeared personally _____ and _____ who, being first duly sworn, declared that the facts set forth in the foregoing application are true.

_____
(My commission expires_____)

(If the employer is a corporation, signature should be made and seal used according to the laws of Ohio, and the official taking

this acknowledgment is cautioned to see that it is properly taken. Do not omit official titles of affiants if corporation.)

Office of
STATE LIABILITY BOARD OF AWARDS,
Columbus, Ohio.

Using the information contained in the foregoing application, as a basis, the STATE LIABILITY BOARD OF AWARDS has classified the employment or employments of_____, of_____, as follows:

Description of Business or Employment.	Estimated Average Number of Employés in Each Employment.	Estimated Total Pay-Roll for Next Six months in Each Employment.	Rate per $100.00 of Wages.	Aggregate Total.	Total.

Accordingly, on this_____day of_____, 191__, a PAY-IN ORDER has been mailed to said applicant and said PAY-IN ORDER will be the authority for the Treasurer of State to receive the sum of $_____ from said APPLICANT, and to place the same to the credit of the State Insurance Fund of Ohio.

STATE LIABILITY BOARD OF AWARDS,
T. J. DUFFY,
MORRIS WOODHULL,
WALLACE D. YAPLE.

(Seal.)

Attest:

_____
Chief Auditor.

Attest:

_____
Actuary.

§ 178. Form of supplementary report—Accident experience.[5]

Table of Number of Accidents and of Pay-Roll	In '09	In '10	In '11
	July 1, 1909 to July 1, 1910.	July 1, 1910 to July 1, 1911.	July 1, 1911 to July 1, 1912.
Table of Number of Accidents and of Pay Roll—			
Total number of all accidents happening (to include only those cases causing a disability of one or more days)			
Number of accidents causing death			
Number of accidents causing disability lasting more than four weeks			
Total amount of pay rool	$	$	$

Employer's Name_____ Address_____

§ 179. Form of notice of employer to employés:

NOTICE TO EMPLOYES.

All workmen or operatives employed in or about this establishment are hereby notified that the employer or employers owning or operating the same have paid into The State Insurance Fund according to the laws of Ohio the premiums provided by the act creating the State Liability Board of Awards to administer said fund. (Act of May 31, 1911, Ohio Laws, Vol. 102, page 524.)

RULE 4.—INJURY NOT RESULTING IN DEATH, NOTICE OF.

An employé who has been injured in the course of his employment and who contemplates filing an application for an award, shall, within one week from receiving such injury, notify or cause notice to be given the Board of the time, place and nature of his injury and the name of his employer. Forms of such notices can be obtained from the employer. Such notices should be mailed to "State Liability Board of Awards, Columbus, Ohio."

Upon receiving such notice the Board forthwith will mail to the injured employé proper forms and blanks for his use in perfecting

[5] It is absolutely essential that the employer furnish the information desired on this sheet. This is very IMPORTANT and WILL AFFECT THE RATE which will be quoted.

his claim, and notify the employer thereof. Unless such notice is given, no application for an award will be considered by the Board.

RULE 5.—INJURY RESULTING IN DEATH, NOTICE OF.

When death results from an injury received by an employé in the course of his employment, the provisions of Rule 4 shall apply, except that notice of death must be given by the attending physician, undertaker, employer, executor, administrator, or a beneficiary, within one week from the time of death.

RULE 7.—APPLICATION-INJURY.

Application for awards in all cases of injury not resulting in death must be made by the party injured not less than two weeks nor more than three months after the injury is received.

RULE 8.—APPLICATION-DEATH.

Application for awards in all cases of injury resulting in death must be made by the executor, administrator or beneficiary of the deceased, or by the attending physician or undertaker where there is no beneficiary, not less than two weeks nor more than six months after death of the injured employé.

Date---------- ----------Employer.

§ 180. A comparison of premium rates under the Ohio law with liability insurance rates under compensation laws.

The economies effected by the Ohio method are shown by the subjoined table which sets out the rates imposed by the Board in forty different employments, and the rates paid to liability insurance companies in the states of New Jersey, Illinois and Wisconsin under their compensation acts. Under the Ohio act the employer engaged in the manufacture of confectionery is insured against liability for personal injuries by the payment of 70 cents on each one hundred dollars of his pay roll. This protection will cost him $1.50 under the compensation act of New Jersey, two dollars under the Illinois law and $2.10 under the Wisconsin statute. In the latter state the non-electing employer covered by the act will pay 75 cents, but he is denied the defenses of contributory negligence and assumption of risk. The comparison as to other employments is shown in the following

table which covers 87 per cent. of all employers covered by the act.[6]

A TABLE OF COMPARATIVE RATES.

Compiled by Emile E. Watson, Actuary of the Board.

Representative Employments	Ohio State Ins. Rate	New Jersey Only Rate	Ill. Only Rate	Wis. Employer Liability Rate	Wis. Compen'n Rate
Confectionery Mfrs.	$0.70	$1.50	$2.00	$0.75	$2.10
Acid Mfrs.	1.20	3.00	4.05	1.05	4.20
Car Mfrs., R. R.	1.85	3.50	4.70	2.40	4.90
Coal Miners	1.80	6.00	15.00	3.00	8.40
Carpenter Contractors	3.05	3.75	4.50	3.00	5.25
Mason Contractors	3.90	5.25	6.30	4.20	7.35
Electric Light & Power Cos.	4.15	6.00	7.20	4.80	8.40
Harness and Saddle Mfrs.	.85	1.25	1.65	.55	1.75
Saw Mills	2.20	4.50	5.60	2.25	6.30
Planing Mill & Lumber Yard	1.60	3.25	4.05	1.50	4.55
Meat Packing & Stock Yards	1.40	2.25	3.35	1.50	3.50
Machine Shops	.85	2.00	2.50	1.00	2.80
Machine Shops, with foundry	.95	2.50	3.10	1.20	3.50
Foundry (iron)	1.25	2.75	3.40	1.50	3.85
Boilermakers	1.95	3.50	4.25	2.25	4.90
Flour Mills	1.20	2.00	2.70	1.20	2.80
Mining (except coal) clay	1.80	6.00	8.10	4.00	8.40
Ice (Artificial) Mfrs.	1.20	2.50	3.35	1.35	3.50
St. Ry.—Electric-Interurban	3.05	8.00	10.80	6.25	11.20
St. Ry.—Electric not Inter'bn	2.15	5.00	6.75	3.75	7.00
Oil (fish, lard, tallow) Mfrs.	1.10	2.25	3.00	1.05	3.15
Blast furnaces	2.65	6.00	8.10	3.75	8.40
Iron Smelters	2.65	6.00	8.10	3.75	8.40
Paper Mfrs. (No saw or bark mills	1.55	2.50	3.35	1.50	3.50
Card Board Mfrs. (No pulp mills)	1.15	2.00	2.70	1.20	2.80
Writing Paper Mfrs.	1.20	1.25	1.65	1.20	1.75
Glass Mfrs. (No plate or window)	.45	1.25	1.65	.30	1.75
Printers	.85	1.25	1.55	.60	1.75
Rubber Mfrs.	1.00	2.25	3.00	.63	3.15
Freight Handlers—Stevedore	2.20	4.00	8.00	3.00	5.60
Lime Quarries — Inc. Blasting, Crushing	3.30	6.00	8.10	3.50	7.00
Cement Mfrs.—No quarry	2.80	4.05	5.40	3.13	5.60
Clothing Mfrs.	.35	.60	.75	.27	.84
Mattress Mfrs. (No spring or wire)	.50	1.50	1.85	.73	2.10
Tobacco Mfrs.—Chewing smoking	.50	.75	1.00	.32	1.05
Great Lakes Steamers	1.90	3.00	1.80	1.35	3.50
Scrap Iron Dealers (Shops or Yard)	3.80	6.00	8.10	4.20	8.40
Storage (Cold-grain)	2.05	2.50	3.38	1.75	3.50
Furniture Mfrs.	1.00	2.00	2.50	.80	2.80
Wood Turners	1.00	2.25	2.80	.96	3.15
Totals	$69.10	$131.85	$180.23	$83.08	$182.84
Ratio	1.	1.9	2.6	1.2	2.6

[6] The State Liability Board of Awards in an authorized circular says:

The Ohio State Compensation Rates are the lowest rates in existence covering the protection afforded by the law.

All other states and all private companies, and some, even for less protection (one-half wages indemnity instead of two-thirds wages indemnity), charge rates from 40% to 250% higher.

The reason is that Ohio handles her own Insurance Fund and provides Insurance at Cost.

§ 181. Procedure as to injured employés.—The State Liability Board of Awards in devising the procedure to be followed by workmen who are covered by the act and who are injured in the due course of their employment, or by their dependents in case they are killed, have divided the various claims that such workmen or their dependents might have for compensations into five groups, as follows:

I. Claims for compensation for injury not resulting in death and which does not incapacitate the worker for more than seven days;

II. Claims for compensation in case of temporary partial disability, temporary total disability, or permanent partial disability;

III. Claims for compensation in cases of permanent total disability;

IV. Claims for compensation in cases of death without dependents;

V. Claims for compensation in cases of death with dependents.

The Board has devised specific blank forms for each class to be filed by those making claims which fall in the five foregoing groups of claims. These forms are grouped together according as the claim falls in the separate groups, and are given in the succeeding sections in the above named order.

§ 182. Form of procedure on notices in general.—As soon as the check of the employer to pay the premium prescribed in section 17 of the Ohio act is received by the State Treasurer, the State Liability Board of Awards sends him the following:

First, a notice by card that he is under the protection of the State insurance plan;

Second, the blank forms: (a) first notice of injury (filled out by injured person); (b) first notice of death

(filled out by physician, undertaker, administrator, or beneficiary).

These forms of notices are given in the following sections in the order named.

§ 183. Form of first notice of injury. (a)[6a]

STATE LIABILITY BOARD OF AWARDS,
COLUMBUS, OHIO.

1. Name of injured person_____
   Address _____
   (Street and Number.) (Post Office.)
   Sex_____ Nationality_____ Speak English?_____
2. Name of employer_____
   Office address _____
   (Street and Number.) (Post Office.)
   Nature of business_____
3. Date of accident_____ Hour of day_____M.
4. Exact location of place where accident happened?_____
   _____
5. How did accident happen?_____
   _____
   _____
6. State fully nature of injury_____
   _____
   _____
7. Is injured person able to work?_____ If not when will injured person be able to return to work? Probably in_____ weeks,_____days. (It is important that a careful answer be given.)
8. Will injured person be able to take up regular employment when he does return to work?_____ If not, why?
   _____
9. Name of attending physician_____ Address_____
10. If taken to hospital, give name and address of hospital_____
    _____
    _____
    Name of injured person making this report.

[6a] This form must be filled out and mailed to the "State Liability Board of Awards, Columbus, Ohio," within one week after date of injury. See Rule 4 of said Board.

§ 184. Form of first notice of death. (b)[7]

STATE LIABILITY BOARD OF AWARDS,
COLUMBUS, OHIO.

1. Name of deceased person_____
   Who resided at_____
   (Street and Number.) (Post Office.)
   Sex_____ Nationality_____ Speak English?_____
2. Name of employer_____
   Office address _____
   (Street and Number.) (Post Office.)
   Nature of business_____
3. Date of accident_____ Hour of day_____M.
4. Exact location of place where accident happened?_____
   _____
5. How did accident happen?_____
   _____
   _____
6. State fully nature of injury which caused death of deceased_____
   _____
   _____
7. Give date of death_____, Hour of day_____M.
8. Name of attending physician_____ Address_____
9. Did deceased have any one dependent upon him for support, either wholly or partially?_____

_____
Name of person making this report.
_____

GROUP I.

FORMS WHERE EMPLOYE IS INCAPACITATED NOT TO EXCEED SEVEN DAYS.

§ 185. Formal procedure for procuring medical, nurse, and hospital services and medicines, without compensation.

A workman who is covered by the act and whose injury does not incapacitate him for a period longer than seven days, is entitled to compensation from the state insurance fund for medical, nurse and hospital services and medicines in such amounts as the Board of Awards

[7] Person making this report should state, on line below signature, whether he or she is the attending physician, undertaker, employer, executor, administrator or a beneficiary.

may deem proper, not, however, in any case to exceed the sum of two hundred dollars. (See §§ 23, 24 and 25 of the act.)

In cases of this character the application, notices and forms which the board requires to be filled out are respectively: (a) application for money to pay medical, nurse and hospital services and medicines; (b) form for physicians fee bill; (c) form for druggists cost bill; (d) form for employers certificate and oath; (e) certificate and oath of lay witness. The acknowledging officer is charged with the duty to see that the blanks are filled and the acknowledgment properly taken.

§ 186. Form of application for money to pay for medical, nurse and hospital services and medicines, without compensation. (a)[7a]

State Liability Board of Awards, Columbus, Ohio.

I, _____, of_____
(Name of Applicant) (Post Office)
_____, County of_____, State of Ohio.
(Street and Number)
do hereby make application for money to pay for medical, nurse and hospital services and medicines for injuries received while in the employ of_____, whose plant is situated at_____, County of_____, State of Ohio.

[7a] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

Applications for awards in all cases of injury not resulting in death must be made by the party injured NOT LESS THAN TWO WEEKS NOR MORE THAN THREE MONTHS after the injury is received.

I have incurred for said services and medicines for treatment for the injury herein described the following bills:

Date	To Whom Paid or Due.	Item	Amount	Bills Paid (Yes or No)

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Age?_____ Sex?_____ Color?_____ Place of birth?_____
   Married, single or divorced?_____ Wife living?_____
   Parent or guardian, if minor?_____
   How many children living?_____ Their ages?_____
   Which of them are dependent upon you for support?_____
   To what degree is each dependent?_____
   _____
   _____
2. What weekly wage were you receiving at time of injury?_____
3. How long had you been receiving such wages?_____
4. What work were you engaged in when injured?_____
5. How long had you been doing this work?_____
6. Was this your regular employment?_____ 7. If not, what was your regular employment?_____ 8. When did you enter employ of present employer?_____
9. With whom were you employed previous to this?_____ _____ 10. How long?_____ 11. Were you skillful in the labor being performed when the injury happened?
   _____
12. Describe the injury_____
   _____
13. Where did you go after accident?_____
14. When did you return to work?_____ 15. How many days were you disabled?_____ 16. Did you return to work as soon as you were able?_____
17. Name of attending physician_____ Address_____
18. Date of accident_____ 19. Hour of day_____, ____M.
20. State clearly the manner in which you were injured_____
   _____
   _____
21. Was accident caused by fault of fellow-workman?_____
22. Did the accident happen on the premises, or away from the plant of your employer?_____
   _____

23. If away from the plant, state where, how and by whom injured
---
---
24. Were you acting under the direction of a foreman?---
Were you obeying orders?---
25. Was accident caused by fault of machines or devices?---
26. Name of machine, device, etc., causing accident---
27. Describe fully its condition---
28. Were all safeguards in their places at time you were hurt?---
29. If any safeguard was removed, did you remove it or was it removed by any of your fellow workmen, or superintendent or foreman? ---
---
30. Name of manager of said plant---Address---
31. Name of foreman or superintendent in charge of department in which I was injured---Address---
32. Names of three witnesses who witnessed the accident:
Name ---Address ---
Name ---Address ---
Name ---Address ---

Witness: --- (Signed) ---
Applicant.

OATH.

State of Ohio, --- County, ss:

Before me, ---, a notary public in and for said county, on this ---- day of ---, 191--, personally appeared ---, the above named applicant, who, first being duly sworn, declared that the facts set forth in the foregoing application are true.

(Seal) ---
Notary Public.

My commission expires ---

§ 187. Form of physician's fee bill. (b)

The following is an itemized account of professional services rendered in connection with the treatment of injury to---
(Name of patient.)
of --- together with charges therefor:
(Full address of patient.)

Date.		Items.	Amount.	
---	---	---	---	---
---	---	---	---	---

(Items should be written out fully. Do not abbreviate.)

--- (Signature of Affiant.)

OATH.

State of Ohio, _____County, ss:

_____, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purposes above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of _____, 191__

(Seal.) _____ Notary Public.

My commission expires_____

§ 188. Form of druggist's cost bill. (c)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to _____, of _____, together with charges
(Name of patient.) (Full address of patient.)
therefor:

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

_____ (Signature of Affiant.)

OATH.

State of Ohio, _____ County, ss:

_____, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of_____, 191__.

_____Notary Public.

(Seal.) My commission expires _____

§ 189. Form of employer's certificate and oath. (d)[8]

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer_____ Address _____
2. Nature of business _____

[8] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise,

3. Name of injured_____ Address _____
Color _____ Place of birth_____
earnings per day?_____ Working days
6. How long had he been receiving such wa
7. What work was he engaged in when injure
8. How long had he been doing this work?_____
his regular employment?_____ 10. If
regular employment?_____ 11. Was
labor being performed when injury happened
did he enter your employment?_____
you known him?_____ 14. How long
son disabled?_____ days. 15. How long off
16. What statement, if any, has injured person ma
17. Give accurate description of injury_____
18. Where was injured person taken after accident
pital, give name and address)_____ 19.
medicines? _____ Address _____
20. Name of attending physician?_____ Addr
21. Date of accident _____ Hour of day_____
22. Place of accident_____, County of
Ohio, _____ 23. Give full details as to
happened _____ 24. Was accident ca
of fellow workman?_____ 25. Did accident
the premises, or at the plant, or in the course of
or away from the plant?_____ 26. If aw
plant, state when, how and by whom injured?_____
27. Was injured person acting under direction of foreman
intendent? _____ 28. Names and addresses of
Name _____ Address_____
Name _____ Address_____
Name _____ Address_____
29. Was accident caused by fault of machines or devices?___
30. Name of machine, device, etc., causing accident?_____
Its condition? _____ 31. Were all safeguards in
places at time of accident? 32. If any safeguard was rem
by whom was it removed?_____
34. Manager of said plant_____Address _____

---

the blank will be returned for correction. While all the infor tion asked for may not be necessary to make up full proof in e instance, yet it is necessary for other requirements of this dep ment.

Fill out blank in ink, using pen or typewriter.

35. Foreman or superintendent in charge of department where deceased was injured: Name_____ Address _____

Witness: _____ Signed _____

Employer.

_____ By _____

(Name and official position of person making this report.)

OATH.

State of Ohio, _____County, ss:

Before me, a notary public in and for said county, on the_____ day of _____, 191__, personally appeared _____, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence, are true.

(Seal.) _____

Notary Public.

My commission expires_____

§ 190. Form of certificate and oath of lay witness. (e)[9]

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report_____Address_____
   What is your present occupation? _____
3. Name of employer_____Address _____
4. Are you related to injured person?_____In what way?_____
   What interest, if any, have you in this claim?_____
5. Name of injured_____Address_____
6. Age _____ Color _____ Nationality _____
7. What work was he engaged in when injured?_____ At what weekly wage? $_____ 8. How long had he been doing this work?_____ 9. Was this his regular employment?_____
   If not, what was his regular employment?_____
10. Was he skilled in the work being done at time of accident?_____
11. Describe the injury_____ 12. Where did injured person go after accident?_____ 13. When did he return to work? _____ Did he return to work as soon as he was able?_____
14. Give full details as to how accident occurred_____
15. What in your estimation, was the immediate cause of the injury? _____ 16. Was accident caused by fault of any fellow workman of injured person?_____ If so, give name and address. 17. Did accident happen on the premises, or at the plant, or in the course of his employment, or away from

---

[9]All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given. Fill out blank in ink, using pen or typewriter.

the plant? 18. If away from plant, state where and by whom he was injured?_____ 19. Give names of two other witnesses:
Name _____ Address _____
Name _____ Address _____
20. Was accident caused by fault of machines or devices?_____
21. Name of machine, device, etc., causing accident_____
Its condition? _____
22. Were all safeguards in their places at time of accident?_____
23. If any safeguard was removed, by whom was it removed?_____
24. Manager of said plant:
Name _____ Address _____
25. Foreman or superintendent in charge of department where deceased was injured:
Name _____ Address _____
In the presence of:_____ Signed _____

OATH.

State of Ohio, _____County, ss:

Before me, _____, a notary public in and for said county, on this ____day of_____, 191__, personally appeared _____, who first being duly sworn, declared that the facts set forth in the foregoing certificate, which ____he signed in my presence, are true.

(Seal.) _____ Notary Public.

My commission expires_____

GROUP II.

FORMS WHERE DISABILITY IS TEMPORARY PARTIAL, TEMPORARY TOTAL OR PERMANENT PARTIAL.

§ 191. Formal procedure to obtain money to pay for medical, nurse and hospital services and medicines, with compensation.

A workman (or woman), who is covered by the act and whose injury does incapacitate him for a period longer than seven days, is entitled to be compensated from the state insurance fund for medical, nurse and hospital services and medicines in such amounts as the Board of Awards may deem proper, not, however, in any case to exceed the sum of two hundred dollars ($200)

and in cases of temporary partial disability, temporary total disability, or permanent partial disability he is entitled to certain additional compensation based upon 66 and 2-3 per cent. of the impairment of his wages as set forth in sections 23, 25, 26 and 31 of the act.

The forms prescribed by the board in this group of cases are as follows: (a) Application for money to pay for expenses of sickness; (b) Employer's certificate and oath; (c) Physician's fee bill; (d) Druggist's cost bill; (e) Medical fee bill and hospital charges, and (f) Certificate and oath of lay witness. It is the duty of the official taking the acknowledgments to the various forms to see that the blanks are properly filled out and the acknowledgment is properly taken.

§ 192. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)[10]

State Liability Board of Awards, Columbus, Ohio.

I, ----------, of ----------
(Name of Applicant.) (Post Office.)
----------, County of ----------, State of Ohio,
(Street and Number)
do hereby make application for money to pay for medical, nurse and hospital services and medicines and for compensation for injuries received while in the employ of----------, whose plant is at ----------, County of----------, State of Ohio.

---

[10] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

Applications for awards in all cases of injury not resulting in death must be made by the party injured NOT LESS THAN TWO WEEKS NOR MORE THAN THREE MONTHS after the injury is received.

I have incurred for said services and medicines for treatment for the injury herein described the following bills:

Date.	To Whom Paid or Due.	Item.	Amount	Bills Paid (Yes or No)

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Age _____ Sex _____ Color _____ Place of birth_____ Married, single or divorced?_____ Wife living?_____ How many children living?_____ Their ages?_____ Which of them are dependent upon you for support?_____ To what degree is each dependent?_____
2. What weekly wage were you receiving at the time of injury? _____ 3. How long had you been receiving such wages? _____ 4. Have you any other income?_____ If so, how much and from what source derived?_____ 5. What work were you engaged in when injured?_____
6. How long had you been doing this work _____ 7. Was this your regular employment?_____ 8. If not, what was your regular employment?_____
9. Have you ever received any other injury?_____ If so, when, where and what was its nature?_____
10. Have you had any recent sickness?_____ If so, describe it and give name of attending physician_____
11. Have you ever had a serious sickness?_____ If so, what was it, how long did it last, and who was attending physician? _____
12. Were you in good health at time of this accident?_____
13. When did you enter employ of present employer?_____
14. With whom were you employed previous to this?_____
15. How long? _____ 16. Were you skilled in the labor being performed when the injury happened?_____ 17. When did you return to work?_____ 18. Were you able to take up your regular employment?_____ 19. Did you take up your regular employment?_____ At what daily wage?_____ If not, why not?_____ And if not, what employment did you take up?_____ At what wage?_____
20. How soon will you be able to do the work you were doing when injured and at the wages then received?_____
21. Is your new employment a temporary one or given you for temporary convenience of yourself or employer, or is it a permanent job? _____

22. What is the impairment of your earning capacity because of this injury alone? Answer: I am now able to earn _____ per cent. and no more, of the wages I was able to earn before this injury. This answer is based upon my actual disability and not upon wages I am now receiving.
23. Fill out this scale: Because of the injury herein mentioned, I was totally disabled for _____days; _____ per cent. disabled for _____ days; and, _____ per cent. disabled for _____ days.
24. Describe the injury_____
25. Where did you go after accident?_____ 26. How many days were you disabled?_____ 27. Have you returned to work?_____ If not, when will you be able to return to work?_____ 28. When were you able to return to work? _____ 29. Did you return to work as soon as you were able?_____ Why? _____ 30. Name of attending physician _____ Address _____
31. Date of accident_____ Hour of day?_____M.
32. State clearly the manner in which you were injured_____
33. Was accident caused by fault of fellow workman?_____
34. Did the accident happen on the premises, or at the plant, or in the course of your employment, or away from the plant of your employer? _____ 35. If away from the plant, state where, how and by whom injured_____
36. Were you acting under the direction of a superintendent?_____
37. Was accident caused by fault of machines or devices?_____
38. Name of machine, device, etc., causing accident_____ Condition?_____ 39. Were all safeguards in their places at the time you were hurt?_____ 40. If any safeguard was removed, did you remove it or was it removed by any of your fellow workmen, or superintendent or foreman? _____
41. Name of manager of said plant_____ Address_____
42. Name of foreman or superintendent in charge of the department in which I was injured_____ Address_____
43. Names of three witnesses who witnessed the accident:
    Name _____ Address _____
    Name _____ Address _____
    Name _____ Address _____
44. Have you previously received any compensation from the State Insurance Fund? _____ If so, when and how much?_____
45. Do you carry any accident insurance?_____ If so, how much and in what companies?_____ 46. Are you a member of any lodge?_____ If so, what lodge or lodges? _____

Witness: _____ (Signed) _____

OATH.

State of Ohio, _____ County, ss:

Before me, a notary public in and for said county, on this_____ day of _____, 191__, personally appeared_____, the above named applicant, who, first being duly sworn, declares that the facts set forth in the foregoing application are true.

(Seal.) _____

My commission expires_____

§ 193. Form of employer's certificate and oath. (b)[11]

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer _____Address _____
2. Nature of business_____
3. Name of injured _____ Address _____
4. Age _____ Sex _____ Color _____ Place of birth_____ Married, single, or divorced?_____ Wife or husband living? _____ How many children living?_____ Their ages? _____ Which of them are dependent upon injured person for support?_____ To what degree is each dependent? _____
5. What weekly wage was he receiving at time of injury?_____
6. How long had he been receiving such wages?_____ 7. What work was he engaged in when injured?_____ 8. How long had he been doing this work?_____ 9. Was this his regular employment?_____ If not, what was his regular employment? _____ 10. Was he skilled in the labor being performed when injury happened?_____ 11. When did he enter your employment?_____ 12. How long have you known him? _____ 13. With whom was he employed previous to this? _____ Address _____ How long?_____
14. What statement, if any, has injured person made?_____
15. Has he ever laid off for sickness?_____ If so, for how long a time and what was his habit in this respect?_____
16. Has injured person returned to work?_____ 17. How long was he disabled? _____ How long off duty?_____
18. If still off duty, when in your estimation, will he be able to re-

---

[11] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

turn to work?_____ 19. When did he return to work? _____ 20. Was he able to take up his regular employment?_____ If not, why not?_____ If not, what employment did he take up?_____ 21. At what weekly wage?_____ 22. How soon will he be able to do the work he was doing when injured and at the wage then received?_____

23. Was his new employment a temporary one or given him for temporary convenience, or is it a permanent job?_____

24. What was the impairment of his earning capacity because of this injury alone? Answer: He is now able to earn_____ per cent. and no more, of the wages he was able to earn before this injury. This answer is based upon his actual disability, and not upon the wages he is now receiving.

25. Fill out this scale: Because of the injury herein mentioned, said injured person has been totally disabled for _____ days; ____% disabled for_____days; ____% disabled for_____days; ____% disabled for_____days; and in my estimation he will be ____% disabled for_____days longer. 26. Did he return to work as soon as he was able?_____ 27. Give accurate description of injury _____

28. Where was injured person taken after accident? (If to a hospital, give name and address)_____

29. Who furnished medicines?_____Address _____

30. Names of attending physicians:
Name _____Address _____
Name _____Address _____

31. Date of accident_____Hour of day_____M.

32. Place of accident: P. O._____, Street and No._____
County of_____, Ohio, _____Building

33. Give full details as to how accident happened_____

34. Was accident caused by fault of fellow workman?_____

35. Did accident happen on the premises, or at the plant, or in the course of employment, or away from plant?_____

36. If away from plant, state when, how and by whom injured? _____

37. Was injured person acting under direction of a superintendent? _____ 38. Names and addresses of witnesses:
Name _____ Address _____
Name _____ Address _____
Name _____ Address _____

39. Was accident caused by fault of machines or devices?_____

40. Name of machine, device, etc., causing accident?_____
Condition _____ 41. Were all safeguards in their places at time of accident?_____ 42. If any safeguard was removed, by whom was it removed?_____

43. Manager of said plant:_____ Address _____

44. Foreman or superintendent in charge of department where deceased was injured:

---------- Address ----------

Witness: Signed ----------

Employer.

---------- By ----------

(Name and official position of person making this report.)

OATH.

State of Ohio, ----------County, ss:

Before me, a notary public in and for said county, on the------ day of ----------, 191--, personally appeared----------, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence, are true.

(Seal.) ----------

Notary Public.

My commission expires----------

§ 194. Form of physician's fee bill. (c)

The following is an itemized account of professional services rendered in connection with the treatment of injury to----------

(Name of patient.)

of ---------- together with charges therefor:

(Full address of patient.)

Date.		Items.	Amount.	
----------	------	----------	--------	------
----------	------	----------	--------	------

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.)

OATH.

State of Ohio, ---------- County, ss:

----------, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this------ day of ----------, 191--.

(Seal.) ----------

Notary Public.

My commission expires----------

§ 195. Form of druggist's cost bill. (d)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to ----------, of ----------
(Name of patient.) (Full address of patient.)
together with charges therefor:

Date.		Items.	Amount.	
----------	------	----------	--------	------
----------	------	----------	--------	------

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.)

OATH.

State of Ohio, ----------County, ss:

----------, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this------ day of----------, 191--.

Notary Public.

(Seal.) My commission expires----------

§ 196. Form of medical fee bill and hospital charges. (e)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to ---------- of ----------,
(Name of patient.) (Full address of patient.)
together with charges therefor:

Date.		Items.	Amount.	
----------	------	----------	--------	------
----------	------	----------	--------	------

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.

OATH.

State of Ohio, _____ County, ss:

_____, being first duly cautioned and sworn, says that _____ is_____ of _____,
(Official position.) (Name of hospital.)
of _____, and as such duly authorized in the premises;
(Address.)
that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefore, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of _____, 191___.

_____
Notary Public.

(Seal.) My commission expires_____

§ 197. Form of certificate and oath of lay witness. (f)[12]

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report_____Address_____
   What is your present occupation?_____
2. Name of your employer?_____Address _____
3. Are you related in any way to injured person?_____ If so, in what way?_____ What interest, if any, have you in this claim? _____
4. Name of injured person_____ Address_____
5. Age ____ Color _____ Nationality _____ Married, single or divorced?_____ Wife or husband living?_____
   How many children living?_____ Their ages?_____
   To what degree are each dependent?_____
6. What weekly wage was he receiving at time of injury?_____
7. How long had he been receiving such wages?_____ 8. Has he any other source of income?_____ If so, how much and from what source derived? _____ 9. What work was he engaged in at time of accident?_____ 10. How long had he been doing this work?_____ 11. Was this his regular employment?_____ If not, what was his regular employment?_____ 12. Was he skilled in the work being done at time of accident?_____ 13. Has he ever received any other injury to your knowledge?_____ If so, when, where

[12]All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given.

Fill out blank in ink, using pen or typewriter.

and what was its nature?---------- 14. Has he ever had any serious sickness to your knowledge?---------- If so, what was it and how long did it last?---------- 15. Has he had any recent sickness to your knowledge?-------- If so, what was it and how long did it last?---------- 16. Was he in good health at time of accident?---------- 17. When did he return to work?---------- Was he able to take up his regular employment?------ If not, why not?---------- And what employment did he take up?---------- At what weekly wage?---------- 18. When will he be able to take up the work he was doing at time of injury?---------- 19. What, in your estimation, is the impairment of his earning capacity because of this injury alone? Answer: He is now able to earn------- per cent., and no more, of the wages he was able to earn prior to this injury. This answer is based upon his actual disability and not upon wages he is now receiving.

20. Was deceased a member of any lodge?------ If so, what lodge or lodges?---------- Did deceased carry any accident insurance? ------ If so, how much and in what companies? ----------

INJURY.

21. Describe the injury ----------
22. Where did injured person go after accident?----------
23. Who was attending physician:
Name ---------- Address ----------
24. Who furnished medicines:
Name ---------- Address ----------

ACCIDENT.

25. Give full details as to how accident occurred?----------
26. What, in your estimation, was the immediate cause of the injury? ----------
27. Was accident caused by fault of fellow workman of injured person? ------ If so, give name---------- Address----------
28. Did accident happen on the premises, or at the plant, or in the course of his employment, or away from the plant?----------
29. If away from the plant, state where and by whom he was injured?---------- 30. Give names of two other witnesses:
Name ---------- Address ----------
Name ---------- Address ----------

MACHINERY.

31. Was accident caused by fault of machines or devices?---------
32. Name of machine, device, etc., causing accident----------
Condition ---------- 33. Were all safeguards in their places

at time of accident?_____ 34. If any safeguard was removed, by whom was it removed?_____ Address_____

35. Manager of said plant:
Name _____ Address _____

36. Foreman or superintendent in charge of department where deceased was injured:
Name _____ Address _____

In the presence of:

_____ Signed _____

OATH.

State of Ohio, _____ County, ss:

Before me, _____, a notary public in and for said county, on this ____ day of_____, 191__, personally appeared _____ who, first being duly sworn, declared that the facts set forth in the foregoing certificate, which __he signed in my presence, are true.

(Seal.) _____

Notary Public.

My commission expires_____

GROUP III.

FORMS IN CASES OF PERMANENT TOTAL DISABILITY.

§ 198. Formal procedure to obtain compensation in case of permanent total disability.

In cases of permanent total disability the workman is entitled to compensation for medical, nurse and hospital services and medicines in such amounts as the board may deem proper, not however in any case to exceed the sum of two hundred dollars ($200), and is entitled in addition thereto to compensation at the rate of 66 and 2-3 per cent. of the impairment of his average weekly wage as long as total disability lasts, as made and provided in sections 23 and 27 of the act.

The forms prescribed in this group of cases are: (a) Application for money to pay for medical, nurse and hospital services and medicine, with compensation; (b) employer's certificate and oath; (c) physician's fee bill; (d) druggist's cost bill; (e) medical fee bill and hospital charges, and (f) certificate and oath of lay witness. It

is the duty of the acknowledging official to see that the blanks are properly filled and the acknowledgment properly taken.

§ 199. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)[18]

State Liability Board of Awards, Columbus, Ohio.

I, _____ of _____,
(Name of Claimant) (Post Office)
_____, County of_____, State of Ohio,
(Street and Number)
by _____, _____, of claimant,
(Name of Applicant.) (Authority)
do hereby make application for money to pay for medical, nurse and hospital services and medicines and for compensation for injuries received while in the employ of_____ whose plant is situated at _____, County of _____, State of Ohio. Said injuries have resulted in permanent total disability.

I have incurred for said services and medicines for treatment for the injury herein described the following bills:

Date	To Whom Paid or Due	Item	Amount	Bill Paid (Yes or No)
------	----	----------	----------	--------	----	------
------	----	----------	----------	--------	----	------

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Age _____ Sex _____ Color _____ Place of birth?_____
Married, single or divorced?_____ Wife or husband living?
_____ How many children living?_____ Their ages?_____
Which of them are dependent upon you for support?_____

[18] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

Applications for awards in all cases of injury not resulting in death must be made by the party injured NOT LESS THAN TWO WEEKS NOR MORE THAN THREE MONTHS after the injury is received.

To what degree is each dependent?_____

2. What weekly wage were you receiving at time of injury?_____
3. How long had you been receiving such wages?_____
4. Have you any other income?_____ If so, how much and from what source derived?_____ 5. What work were you engaged in when injured?_____ 6. How long had you been doing this work?_____ 7. Was this your regular employment?_____ 8. If not, what was your regular employment?_____ 9. Have you ever received any other injury? _____ If so, when, where, and what was its nature?_____ 10. Have you had any recent sickness?_____ If so, describe it and give name of attending physician _____ 11. Have you ever had a serious sickness?_____ If so, what was it, how long did it last, and who was attending physician?_____
12. Were you in good health at the time of this accident?_____
13. When did you enter employ of present employer?_____
14. With whom were you employed previous to this?_____
15. How long?_____ 16. Were you skilled in the labor being performed when the injury was sustained?_____ 17. Did permanent total disability ensue immediately after injury was sustained?_____ 18. If not, when did permanent total disability ensue?_____ 19. Did you return to work before permanent total disability ensued?_____ When?_____ How long did you work?_____ At what weekly wage? _____ 20. What impairment of earning capacity resulted from injury and lasted through the period last mentioned?_____

INJURY.

21. Describe the injury_____
22. Where did you go after accident?_____
23. Names of attending physicians:
    Name _____ Address _____
    Name _____ Address _____

ACCIDENT.

24. Date of accident_____ Hour of day_____M.
25. State clearly the manner in which you were injured_____
26. Was accident caused by fault of fellow workmen?_____
27. Did accident happen on the premises, or at the plant, or in the course of your employment, or away from the plant of your employer?_____ 28. If away from the plant, state when, how and by whom injured_____
29. Were you acting under the direction of a superintendent or foreman? _____

MACHINERY.

30. Was accident caused by fault of machines or devices?_____
31. Name of machine, device, etc., causing accident?_____ Condition? _____ 32. Were all safeguards in their places at the time you were hurt?_____ 33. If any safeguard was removed, did you remove it or was it removed by any of your fellow workmen, or superintendent or foreman?_____
34. Name of manager of said plant_____Address_____
35. Name of foreman or superintendent in charge of the department in which injury was sustained_____ Address_____
36. Names of three witnesses who witnessed the accident:
Name _____ Address _____
Name _____ Address _____
Name _____ Address _____
37. Have you previously received any compensation from the State Insurance Fund?_____ If so, when and how much?_____
38. Do you carry any accident insurance?_____ If so, how much and in what companies?_____ 39. Are you a member of any lodge?_____ If so, what lodge or lodges?_____

Witness: _____ (Signed) _____

OATH.

State of Ohio, _____ County, ss:

Before me, a notary public, in and for said county, on this_____ day of _____, 191__, personally appeared_____, the above named claimant, who, being first duly sworn, declared that the facts set forth in the foregoing application are true.

(Seal.) _____
Notary Public.

My commission expires_____

(Following oath to be made by person representing claimant because of the latter's disability and consequent inability to make application in person.)

OATH.

State of Ohio, _____ County, ss:

Before me, a notary public in and for said county, on this_____ day of _____, 19__, personally appeared_____, representing the above named claimant, who first being duly sworn, declared that _____, the above named claimant, is physically unable to make this application in person and that he therefore acts in this representative capacity by authority_____, and he further declared that the facts set forth in the foregoing application are true.

(Seal.) _____
Notary Public.

My commission expires_____

§ 200. Form of employer's certificate and oath. (b)[14]

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer _____ 2. Nature of business_____
3. Name of injured_____ Address_____
4. Age _____ Sex _____ Color _____ Place of birth_____ Married, single, or divorced?_____ Wife or husband living? _____ How many children living?_____ Their ages?_____ Which of them are dependent upon injured person for support? _____ To what degree is each dependent?_____
5. What weekly wage was he receiving at time of injury?_____
6. How long had he been receiving such wages?_____ 7. What work was he engaged in when injured?_____ 8. How long had he been doing this work?_____ 9. Was this his regular employment?_____ If not, what was his regular employment? _____ 10. Was he skilled in the labor being performed when injury happened?_____ 11. When did he enter your employment?_____ 12. With whom was he employed previous to this?_____ How long?_____
13. What statement, if any, has injured person made?_____
14. Has he ever laid off for sickness?_____ If so, for how long a time and what was his habit in this respect?_____
15. Did permanent disability ensue immediately after injury was sustained?_____ If not, when did permanent disability ensue? _____ 16. Did injured person return to work before permanent disability ensued?_____ When?_____ How long did he work?_____ At what weekly wage?_____
17. What impairment of earning capacity resulted from injury and lasted through period last mentioned? Answer: He was able to earn_____ per cent., and no more, of his former wage. This statement is based upon his actual disability.
18. Give accurate description of injury_____
19. Where was injured person taken after accident? (If to a hospital give name and address)_____ 20. Who furnished medicines? _____ Address _____

---

[14] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

21. Names of attending physicians:
Name _____ Address _____
Name _____ Address _____
22. Date of accident_____ Hour of day_____M.
23. Place of accident: P. O._____, Street and No._____
County of _____, Ohio, _____Building
24. Give full details as to how accident happened_____
25. Was accident caused by fault of fellow workman?_____
26. Did accident happen on the premises, or at the plant, or in the course of employment, or away from plant?_____ 27. If away from the plant, state when, how and by whom injured?
_____
28. Was injured person acting under direction of a superintendent? _____ 29. Names and addresses of witnesses:
Name _____ Address _____
Name _____ Address _____
Name _____ Address _____
30. Was accident caused by fault of machines or devices?_____
31. Name of machine, device, etc., causing accident?_____
Condition? _____ 32. Were all safeguards in their places at time of accident?_____ 33. If any safeguard was removed, by whom was it removed?_____
34. Manager of said plant_____ Address _____
35. Foreman or superintendent in charge of department where deceased was injured:
Name _____ Address _____

Witness: _____ Signed_____
Employer.

By _____
(Name and official position of person making this report.)

OATH.

State of Ohio, _____County, ss:

Before me, a notary public in and for said county, on the_____ day of _____, 191__, personally appeared_____, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence, are true.

(Seal.) _____
Notary Public.

My commission expires_____

§ 201. Form of physician's fee bill. (c)

The following is an itemized account of professional services rendered in connection with the treatment of injury to_____
(Name of patient.)
of _____ together with charges therefor:
(Full address of patient.)

Date.	Items.	Amount.
_____ _____	_____	_____ _____
_____ _____	_____	_____ _____

(Items should be written out fully. Do not abbreviate.)

_____
(Signature of Affiant.)

OATH.

State of Ohio, _____ County, ss:

_____, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than the charges for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of _____, 191__.

(Seal.) _____
Notary Public.

My commission expires_____

§ 202. Form of druggist's cost bill. (d)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to _____, of _____, together with charges therefor:
(Name of patient.) (Full address of patient.)

Date.	Items.	Amount.
_____ _____	_____	_____ _____
_____ _____	_____	_____ _____

(Items should be written out fully. Do not abbreviate.)

_____
(Signature of Affiant.)

OATH.

State of Ohio, _____ County, ss:

_____, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of _____, 191__.

_____
Notary Public.

(Seal.) My commission expires_____

203. Form of medical fee bill and hospital charges. (e)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to _____, of _____, together with
(Name of patient.) (Full address of patient.)
charges therefor:

Date.	Items.	Amount.
_____ _____	_____	_____ _____
_____ _____	_____	_____ _____

(Items should be written out fully. Do not abbreviate.)

_____
(Signature of Affiant.)

OATH.

State of Ohio, _____ County, ss:

_____, being first duly cautioned and sworn, says that _____ is_____ of _____,
(Official position.) (Name of hospital.)
of _____, and as such duly authorized in the prem-
(Address.)
ises; that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of_____, 191__.

_____
Notary Public.

(Seal.) My commission expires_____

§ 204. Form of certificate and oath of lay witness (f).[15]

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report_____ Address_____ What is your present occupation?_____
2. Name of employer_____ Address_____
3. Are you related in any way to injured person?_____ If so, in what way _____ What interest have you in this claim?_____
4. Name of injured person_____ Address_____
5. Age _____ Color _____ Nationality _____ Married, single or divorced? Wife or husband living?_____ How many children living?_____ Their ages _____ To what degree are each dependent? _____ 6. What weekly wage was he receiving at time of injury?_____ 7. How long had he been receiving such wages?_____ 8. Has he any other source of income?_____ If so, how much and from what source derived? _____ 9. What work was he engaged in at time of accident? _____ 10. How long had he been doing this work?_____ 11. Was this his regular employment?_____ If not, what was his regular employment?_____ 12. Was he skilled in the work being done at time of accident?_____
13. Has he ever received any other injury to your knowledge?_____ _____ If so, when, where and what was its nature?_____
14. Has he ever had any serious sickness to your knowledge?_____ _____ If so, what was it and how long did it last?_____
15. Has he had any recent sickness to your knowledge?_____ If so, what was it and how long did it last?_____ 16. Was he in good health at time of accident?_____ 17. Did permanent total disability ensue immediately after injury was sustained?_____ If not, when did permanent total disability ensue?_____ 18. Did he return to work before permanent total disability ensued?_____ When?_____ How long did he work?_____ At what weekly wage?_____ 19. What impairment of earning capacity resulted from injury and lasted through the period last mentioned? Answer: He was able to earn_____ per cent., and no more, of the wage he was earning when injured.
20. Was deceased a member of any lodge?_____ If so, what lodge or lodges?_____ Did deceased carry any accident insurance?_____ If so, how much and in what companies?_____
21. Describe the injury_____

---

[15]All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given. Fill out blank in ink, using pen or typewriter.

22. Where did injured person go after accident?_____
23. Names of attending physicians:
Name _____ Address _____
24. Date of accident?_____ Hour of day?_____M.
25. Give full details as to how accident occurred?_____
26. What, in your estimation, was the immediate cause of the injury?_____ 27. Was accident caused by fault of any fellow workman of injured person _____ If so, give name _____ Address _____
28. Did accident happen on the premises, or at the plant, or in the course of his employment, or away from the plant?_____
29. If away from the plant, state where and by whom he was injured? _____ 30. Give names of two other witnesses:
Name _____ Address _____
Name _____ Address _____
31. Was accident caused by fault of machines or devices?_____
32. Name of machine, device, etc., causing accident_____
Condition _____ 33. Were all safeguards in their places at time of accident?_____ 34. If any safeguard was removed, by whom was it removed?_____
35. Manager of said plant:_____ Address _____
36. Foreman or superintendent in charge of department where deceased was injured: _____ Address _____
In the presence of:_____ Signed _____

OATH.

State of Ohio,_____County, ss:

Before me, _____, a notary public in and for said county, on this ____ day of_____, 191__, personally appeared _____ who, first being duly sworn, declared that the facts set forth in the foregoing certificate, which ____he signed in my presence, are true.

(Seal.) _____

Notary Public.

My commission expires_____

GROUP IV.

FORMS IN CASES OF DEATH WITHOUT DEPENDENTS.

§ 205. Forms to obtain money to pay for medical, hospital and funeral expenses only.

Where a workman (or woman) covered by the act receives an injury causing death within two years after the accident and leaves no dependents, then the disburse-

ments that shall be made on account of such an accident shall be limited to any sum not to exceed two hundred dollars ($200) for medical, hospital and nurse services and medicines, and to any sum not to exceed one hundred and fifty dollars for funeral expenses, as the Liability Board of Awards may deem proper. See § 28, par. 1, 23 and 24 of the act.

In this group of cases the forms to be filled out and filed with the board are: (a) Application for money paid for medical, nurse and hospital services and medicines and for funeral expenses; (b) undertaker's certificate of death and cost bill; (c) witness's certificate in proof of death; (d) physician's certificate of death; (e) employer's certificate and oath; (f) physician's fee bill; (g) druggist's cost bill; (h) medical fee bill and hospital charges, and (i) certificate and oath of lay witness. It is the duty of the officer taking the acknowledgment to see that the blanks are properly filled and the acknowledgment properly taken.

§ 206. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses, without award. (a)[16]

State Liability Board of Awards,
Columbus, Ohio,

I, _____ of _____
(Name of Applicant) (Post Office)
_____, County of _____, State of Ohio.
(Street and Number)

[16]All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Application for awards in all cases of injury resulting in death must be made by the executor or administrator or beneficiary of the deceased, or by the attending physician or undertaker where there is no beneficiary, NOT LESS THAN TWO WEEKS NOR MORE THAN SIX MONTHS after the death of the injured employé.

Fill out blank in ink, using pen or typewriter.

do hereby make application for money to pay for medical, nurse and hospital services and medicines and for funeral expenses for ----------of----------, State of Ohio, who was----------

(Killed or Injured)

while in the employ of----------whose plant is situated at ----------, County of----------, State of Ohio, and who died at ----------o'clock--------M. on the-------day of----------, 191--

My relation to deceased is----------

The reasons why this application is made by me and not by another are:----------

(Answer must be full and complete)

There has been incurred for said services and medicines for treatment for the injury herein described and for funeral expenses the following bills:

Date	To whom Paid or Due	Item	Amount	Bills Paid (Yes or No)
----	----------	----------	-------	----------
----	----------	----------	-------	----------

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Age?---------- Sex ---------- Color?---------- Place of birth?---------- Married, single or divorced?---------- Wife or husband living?---------- How many children living---------- Their ages?----------
DECEASED HAD NO DEPENDENTS.
2. What weekly wage was deceased receiving at the time of injury? $---------- 3. How long had deceased been receiving such wages ---------- 4. Had deceased any other income?---------- If so, how much and from what source derived?----------
5. What work was deceased engaged in when injured?----------
6. How long had deceased been doing this work?----------
7. Was this his regular employment?---------- 8. If not, what was his regular employment?---------- 9. When did deceased enter employment of present employer?----------
10. With whom was he employed previous to this? Name---------- Address---------- 11. How long?---------- 12. Was deceased skilled in the labor performed when injury was sustained? ----------
13. How long did disability caused by injury last before death ensued?---------- 14. State if there was partial recovery and how long it lasted----------
15. Did deceased return to work?---------- 16. How long did

deceased remain at work?_____ 17. At what weekly wage? _____

18. When at work he was able to earn_____per cent. of the wages received before injury, and no more. This statement is based upon decedent's actual earning capacity, and not merely upon wages received. 19. Did deceased receive any compensation from the State Insurance Fund?_____ 20. How much?_____ 21. Describe the injury which caused death of deceased_____

_____

_____

22. Where was deceased taken after accident?_____
23. Names of attending physicians:
    Name_____ Address_____
    Name_____ Address_____
24. Name of undertaker_____ Address_____
25. Who furnished medicines?____ Address_____
26. Date of accident_____ Hour of day_____M.
27. State clearly the manner in which accident occurred_____

_____

_____

28. Was accident caused by fault of fellow workman?_____
29. Did accident happen on the premises, or at the plant, or in the course of employment of deceased, or away from the plant of the employer?_____ 30. If away from the plant, state when, how and by whom injured _____

_____

31. Was deceased acting under direction of a superintendent?_____

_____

31. Was accident caused by fault of machines or devices?_____
32. Name of machine, device, etc., causing accident?_____
    Condition _____
33. Were all safeguards in their places at the time deceased was hurt? _____
34. If any safeguard was removed, did deceased remove it or was it removed by any fellow workman of deceased, or superintendent or foreman?_____
35. Name of manager of said plant_____ Address_____
36. Name of foreman or superintendent in charge of department in which deceased was injured_____
    Address _____
37. Name of three witnesses who witnessed the accident:
    Name_____ Address_____
    Name_____ Address_____
    Name_____ Address_____
38. Was deceased a member of any lodge?_____ If so, what

lodge or lodges?_____ 39. Did deceased carry any accident insurance?_____ If so, how much and in what companies? _____

_____

Witness:

_____ (Signed)_____

_____

OATH.

State of Ohio, _____ County, ss:

Before me, a notary public in and for said county, on this_____ day of_____, 191__, personally appeared_____, the above named applicant, who being duly sworn, declared that the facts set forth in the foregoing application are true.

_____

Notary Public.

(Seal)

My commission expires_____

§ 207. Form of undertaker's certificate of death and cost bill. (b)

State of Ohio, _____ County, ss:

_____, of_____,

(Name of undertaker.)

says that he is a duly licensed undertaker of_____, Ohio, at _____; that as such he was required on

(Street and number.)

the_____day of_____, 191__, to prepare the dead body of_____for burial; that he placed said body in a coffin and placed said coffin, containing the said body, in a_____ in _____ cemetery at _____, State of_____.

Affiant further says that the following is a true and accurate account of articles furnished and services rendered in connection with the preparation and burial of said body, and the charges therefor; that such articles and services were required and furnished on account of the purpose above mentioned and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Date.	Items.	Amount.

(Items should be written out fully. Do not abbreviate.)

_____

(Signature of Affiant.)

OATH.

Sworn to before me and subscribed in my presence, this_____ day of_____, 191__

_____

Notary Public.

(Seal.) My commission expires_____

§ 208. Form of lay witness's certificate in proof of death. (c)

1. Name of deceased in full_____
   Sex_____Color_____
2. How long have you known the deceased _____
3. (a) Age at death_____years. (b) Names and ages of children _____
   _____
4. Place of death (Give street number, city or town, and state):
   Street_____City or town_____State_____
5. (a) Occupation at the time of death_____
   (b) Nationality _____
6. Date when you first saw deceased after injury_____
7. Date when you last saw deceased after injury_____
8. Date of death_____
9. (a) What caused death?_____
   (b) How long after injury?_____
10. Did you see the body of the deceased and did you identify it as that of the injured workman at_____
    _____while in the employ of_____
    of _____
11. Was a coroner's inquest held _____Name of coroner_____
    Address _____
12. What physician attended deceased?
    Name_____ Address_____
    Name_____ Address_____
13. Was health of deceased impaired by intemperance or any pernicious habit?_____If so, what?_____
14. Have you any interest in this claim?_____
15. Have you stated all the material facts connected in any way with this death?_____
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?_____
    Dated this_____day of_____, 191__

_____

Attending Physician.

OATH.

State of Ohio, _____ County, ss:

On this_____day of_____, A. D. 191__, personally appeared before me, the above named_____, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

_____

Notary Public.

My commission expires_____

§ 209. Form of physician's certificate in proof of death. (d)[17]

1. Name of the deceased in full_____
   Sex_____Color_____
2. (a) How long have you known the deceased _____
   (b) How long have you been medical adviser of deceased?_____
3. (a) Age at death_____years. (b) Married or single _____ (c) Names and ages of children_____
   _____
   _____
4. Place of death (Give street number, city or town, and state):
   Street_____City or town_____State_____
5. (a) Occupation at the time of death_____
   (b) Nationality _____
6. Date of your first visit or prescription_____
7. Date of your last visit_____
8. Date of death_____
9. (a) State the remote cause of death_____
   _____
   _____
   (b) State explicitly the immediate cause of death_____
10. Did you see the body of the deceased and did you identify it as that of the injured workman at_____
    while in the employ of_____, of_____?
11. Was a coroner's inquest held?_____Name of coroner _____Address_____
12. Was deceased attended by any other physician during last illness? If so, state his name and address_____
13. Was health of deceased impaired by intemperance or any pernicious habit?_____If so, what?_____
    _____
14. Have you any interest in this claim?_____

[17]To be filled out by the attending physician of deceased. Fill in all blanks with ink, using pen or typewriter.

15. Have you stated all the material facts connected in any way with this death?_____
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?_____

Dated this_____day of_____, 191__

_____

_____
Attending Physician.

Degree?_____ Year_____ College_____

OATH.

State of Ohio, _____ County, ss:

On this_____ day of_____, A. D. 191__, personally appeared before me, the above named_____, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

_____
Notary Public.

My commission expires_____

§ 210. Form of employer's certificate and oath. (e)[18]

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer _____ Address _____
2. Nature of business _____
3. Name of deceased_____ 4. Age _____ Sex _____ Color _____ Place of birth _____ How many children living _____ Their ages?_____
   DECEASED HAD NO DEPENDENTS.
5. What weekly wage was deceased receiving at time of injury? _____ 6. How long had he been receiving such wages? _____ 7. What work was he engaged in when injured?_____
8. How long had he been doing this work?_____ 9. Was this his regular employment?_____ If not, what was his regular employment? _____ 10. Was he skilled in the labor being performed when injury happened?_____ 11. When did he enter your employment? _____ 12. With whom was he

[18] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

employed previous to this? Name _____
Address _____ How long _____

13. How long did disability caused by injury last before death ensued? _____ 14. State if there was partial recovery and how long it lasted?_____ 15. Did deceased return to work?_____ How long did he remain at work before death? _____ At what weekly wage?_____ 16. What impairment of earning capacity resulted from injury and lasted from date of return to work until death of deceased? Answer: He was able to earn _____per cent., and no more, of his former wage.
17. Was deceased a member of any lodge?_____ If so, what lodge or lodges?_____ Did deceased carry accident insurance? _____ If so, how much and in what companies?_____
18. Give accurate description of injury which caused death_____
19. Where was deceased taken after accident? (If to a hospital, give name and address)_____ 20. Who furnished medicines? _____ Address _____
21. Names of standing physicians:
Name _____ Address _____
Name _____ Address _____
22. Name of undertaker_____ Address _____
23. Date of accident_____ Hour of day_____M.
24. Place of accident, P. O._____ Street and No._____
County of _____, Ohio, _____Building.
25. Give full details as to how accident happened_____
26. Was accident caused by fault of fellow workman?_____
27. Did accident happen on the premises, or at the plant, or in the course of employment, or away from plant?_____ 28. If away from plant, state when, how and by whom injured?_____.
29. Names and addresses of witnesses:
Name _____ Address _____
Name _____ Address _____
Name _____ Address _____
30. Was accident caused by fault of machine or devices?_____
31. Name of machine, device, etc., causing accident_____
Condition _____ 32. Were all safeguards in their places at time of accident?_____ 33. If any safeguard was removed, by whom was it removed?_____ 34. Manager of said plant:
Name _____ Address _____
35. Foreman or superintendent in charge of department where deceased was injured:
Name _____ Address _____

Witness: _____ Signed _____
Employer.
By _____
(Name and official position of person making this report.)

OATH.

State of Ohio, _____ County, ss:

Before me, a notary public in and for said county, on the_____ day of _____, 191__, personally appeared_____, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence are true.

(Seal.) _____

Notary Public.

My commission expires_____

§ 211. Form of physician's fee bill. (f)

The following is an itemized account of professional services rendered in connection with the treatment of injury to_____

(Name of patient.)

of _____ together with charges therefor:

(Full address of patient.)

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

_____

(Signature of Affiant.)

OATH.

State of Ohio, _____ County, ss:

_____, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of _____, 191__.

(Seal) _____

Notary Public.

My commission expires_____

§ 212. Form of druggist's cost bill. (g)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to

---------- of ----------, together with charges
(Name of patient.) (Full address of patient.)
therefor:

Date.	Items.	Amount.
---------- ------	----------	------- ------
---------- ------	----------	------- ------

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.)

OATH.

State of Ohio, ---------- County, ss:

----------, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this------ day of ----------, 191---.

(Seal.) ----------
Notary Public.

My commission expires----------,

§ 213. Form of medical fee bill and hospital charges. (h)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to ----------, of ----------, together with charges
(Name of patient.) (Full address of patient.)
therefor:

Date.	Items.	Amount.
---------- ------	----------	-------- ------
---------- ------	----------	-------- ------

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.)

OATH.

State of Ohio, ---------- County, ss:

----------, being first duly cautioned and sworn, says that -------- is ---------- of ----------,
(Official position.) (Name of hospital.)

----------, and as such duly authorized in the premises; that the (Address.)
above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of ----------, 191__.

(Seal.) ----------

Notary Public.

My commission expires----------

§ 214. Form of certificate and oath of lay witness. (i)[19]

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report_____ Address _____
2. What is your present occupation?_____ Name of employer ---------- Address ----------
3. Are you related in any way to injured person?_____ If so, in what way?_____ 4. What interest, if any, have you in this claim? ----------
5. Give name of deceased_____ Age _____ Color _____ Nationality ----------
DECEASED HAD NO DEPENDENTS.
6. What weekly wages was deceased receiving at time of injury? _____ 7. What work was deceased engaged in when injured? _____ How long had he been doing this work?_____
8. Was this his regular employment?_____ If not, what was his regular employment?_____ 9. Was he skilled in the work being done at time of accident?_____ 10. How long did disability caused by injury last before death ensued?_____
11. State if there was a partial recovery and how long it lasted _____ 12. Did deceased return to work?_____ 13. How long did he remain at work?_____ At what weekly wage? _____ 14. When at work he was able to earn_____ per cent. of the wages received before injured and no more. This statement is based upon the actual earning capacity of deceased and not merely upon the wages received.
15. Did deceased receive any compensation from the State Insurance Fund?_____ How much?_____ 16. Was deceased a

---

[19]All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given.

Fill out blank in ink, using pen or typewriter.

member of any lodge?_____ If so, what lodge or lodges?_____

17. Did deceased carry any accident insurance?_____ If so, how much and in what companies?_____

18. Describe injury which caused death of deceased_____

19. Where was deceased taken after accident? (If to a hospital, give name and address)_____

20. Who furnished medicines?
Name _____ Address _____

21. Names of attending physicians:
Name _____ Address _____
Name _____ Address _____

22. Name of undertaker_____ Address _____

23. Date of accident _____ Hour of day_____M.

24. Did you witness the accident?_____ 25. Give full details as to how accident occurred_____ 26. What, in your estimation, was the immediate cause of the injury?_____

27. Was accident caused by fault of any fellow workman of deceased? _____ If so, give name?_____ 28. Did accident occur on the premises, or at the plant, or in the course of his employment, or away from the plant?_____ 29. If away from plant, state where and by whom he was injured? _____ 30. Give names of two other witnesses:
Name _____ Address _____
Name _____ Address _____

31. Was accident caused by fault of machines or devices?_____

32. Name of machine, device, etc., causing accident_____
Condition _____ 33. Were all safeguards in their places at time of accident?_____ 34. If any safeguard was removed, by whom was it removed?_____

35. Manager of said plant_____ Address _____

36. Foreman or superintendent in charge of department where deceased was injured:
Name _____ Address _____

In the presence of: _____ Signed _____

OATH.

State of Ohio, _____ County, ss:

Before me, _____, a notary public in and for said county, on this _____ day of_____, 191__, personally appeared _____ who, first being duly sworn, declared that the facts set forth in the foregoing certificate, which ____he signed in my presence, are true.

(Seal.) _____
Notary Public.

My commission expires_____

GROUP V.

FORMS IN CASES OF DEATH WITH DEPENDENTS.

§ 215. Form of procedure to obtain compensation and money to pay for medical, hospital and funeral expenses.

Where a workman (or work-woman), covered by the act has received an injury causing death within two years after the accident and left dependents, the disbursements to the dependents on account of such an accident are limited to any sum not to exceed two hundred dollars ($200) for medical, nurse and hospital services and medicines and to any sum not to exceed one hundred and fifty dollars ($150) for funeral expenses as the Liability Board of Awards may deem proper and compensation at 66 2-3 per cent. of his average weekly wage for six years.[19a]

In this group of cases the forms prescribed by the board are as follows: (a) Application for money paid for medical, nurse and hospital services and medicines and for funeral expenses; (b) proof of dependents; (c) undertaker's certificate of death and cost bill; (d) lay witness's certificate in proof of death; (e) physician's certificate in proof of death; (f) employer's certificate and oath; (g) physician's fee bill; (h) druggist's cost bill; (i) medical fee bill and hospital bill: (j) certificate and oath of lay witness. It is the duty of the officer taking the acknowledgment to these forms to see that they are properly filled out and the acknowledgment properly taken.

§ 216. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses, with awards.[20] (a)

[19a] See ante § 171 and thereunder § 28, par. 2, 3, and §§ 23, 24, 29, 30 and 31.

[20] All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must

State Liability Board of Awards, Columbus, Ohio.

I, _____, of_____, _____,
(Name of Applicant) (Post Office) (Street and Number)
County of _____, State of Ohio, do hereby make application for money to pay for medical, nurse and hospital services and for funeral expenses for _____ of _____,
State of Ohio, who was_____ while in the employ of
(Killed or Injured)
_____whose plant is situated at_____, County of_____,
Ohio, and who died at_____ o'clock _____M. on the _____ day of _____, 191__.

I also make application for an award as provided in Section 28 of the Act creating the State Insurance Fund. This application is made for the benefit of the dependents hereinafter named and is made by me and not by another upon the authority and for the reasons here given:_____
(Here state fully relationship of applicant to deceased, legal status and other reasons why particular person is applicant herein.)

The following persons were partly or wholly dependent upon deceased at the time of his death:

	Relation	Age	Place of Birth
Name _____			
Address _____			

Partly or wholly?_____In what amount per week? $_____
In money or other aid?_____ What?_____

	Relation	Age	Place of Birth
Name _____			
Address _____			

Partly or wholly?_____In what amount per week? $_____
In money or other aid?_____ What?_____

There has been incurred for said services and medicines for

---

be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

Application for awards in all cases of injury resulting in death must be made by the executor or administrator or beneficiary of the decedent, or by the attending physician or undertaker where there is no beneficiary, NOT LESS THAN TWO WEEKS NOR MORE THAN SIX MONTHS after the death of the injured employe.

treatment for the injury herein described and for funeral expenses the following bills:

Date	To Whom Paid or Due	Item	Amount	Bill Paid (Yes or No)

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Deceased's age_____ Sex_____ Color_____ Place of birth_____ Married, single or divorced?_____ Wife or husband living?__
2. What weekly wage was deceased receiving at time of injury? _____ 3. How long had deceased been receiving such wages? _____ 4. Had deceased any other income?_____ If so, how much and from what source derived?_____ 5. What work was deceased engaged in when injured?_____ 6. How long had deceased been doing this work?_____ 7. Was this his regular employment?_____ If not, what was his regular employment?_____ 8. Had deceased ever received any other injury?_____ If so, when and where and what was its nature?_____ 9. Had deceased any recent sickness?_____ If so, describe it and give name of attending physician_____
10. Had deceased ever had a serious sickness?_____ If so, what was it and how long did it last?_____ Give names of attending physicians: Name _____ Address _____ Name _____ Address _____
11. Was deceased in good health at the time of this accident?_____
12. When did deceased enter employ of present employer?_____
13. With whom was he employed previous to this? Name_____ Address _____ How long _____
14. Was deceased skilled in the labor being performed when injury was sustained?_____ 15. How long did disability caused by injury last before death ensued?_____ 16. State if there was partial recovery and how long it lasted?_____
17. Did deceased return to work?_____ How long did deceased remain at work?_____ At what weekly wage?_____
18. When at work he was able to earn _____ per cent. of the wages received before injury, and no more. This statement is based upon the actual earning capacity of deceased and not merely upon wages received. 19. Did deceased receive any compensation from the State Insurance Fund?_____ 20. How much? $ _____
21. Describe the injury which caused death of deceased_____
22. Where was deceased taken after accident_____

23. Names of attending physicians:
Name _____ Address _____
Name _____ Address _____
24. Who furnished medicines?_____ Address _____
25. Name of undertaker _____ Address _____
26. Date of accident _____ Hour of day_____M.
27. State clearly the manner in which accident occurred_____
28. Was accident caused by fault of fellow workman?_____
29. Did accident happen on the premises, or at the plant, or in the course of employment of deceased, or away from the plant of the employer?_____ 30. If away from the plant, state when, how and by whom injured?_____ 31. Was deceased acting under direction of a superintendent?_____
32. Was accident caused by fault of machines or devices?_____
33. Name of machine, device, etc., causing accident_____
Condition? _____ 34. Were all safeguards in their places at the time deceased was hurt?_____ 35. If any safeguard was removed, did deceased remove it or was it removed by any fellow workman of deceased, or superintendent or foreman? _____
36. Name of manager of said plant_____ Address _____
37. Name of foreman or superintendent in charge of department in which deceased was injured_____ Address _____
38. Names of three witnesses who witnessed the accident:
Name _____ Address _____
Name _____ Address _____
Name _____ Address _____
39. Was deceased a member of any lodge?_____ If so, what lodge or lodges? _____ 40. Did deceased carry any accident insurance? _____ If so, how much and in what companies? _____

Witness: _____ Signed _____
Applicant.

OATH.

State of Ohio, _____ County, ss:

Before me, a notary public in and for said county, on this_____ day of _____, 191__, personally appeared _____, the above named applicant, who, being duly sworn, declared that the facts set forth in the foregoing application are true.

(Seal.) _____
Notary Public.

My commission expires_____

(Note—The official taking this acknowledgment is cautioned to see that this blank is properly filled out and that the acknowledgment is properly taken.)

OATH.

(Additional oath to be made by dependents capable of understanding the nature of an oath.)

State of Ohio, _____ County, ss:

Before me, a notary public in and for said county, on this_____ day of _____, 191__, personally appeared_____ _____ and _____ and _____ _____ and _____ and _____ being all of the above named dependents capable of understanding the nature of an oath, who, being first duly sworn, declared that the facts set forth in this application are true.

_____

_____

Sworn to before me and subscribed in my presence on this____ day of _____, 191__.

(Seal.) _____

Notary Public.

My commission expires_____

§ 217. Form of proof of dependents. (b)

State of Ohio, _____ County, ss:

On this _____ day of_____, 191__, personally appeared before me, a_____ within and for the county aforesaid, _____, who being duly sworn according to law, declares that ____he resides in_____, County of_____, State of Ohio, and that ____he was acquainted with_____ of _____, who died on _____, 191__, as the result of an injury received on_____, 191__, while in the employ of _____ of_____

Affiant also declares that ____he knows who were dependent upon _____ for support and to what degree dependent, and that they are as follows:

1. Name _____ How dependent?_____
   Address _____ In what degree? _____
   Relation _____ In money or other aid?_____
   Age __ Birthplace___ In what weekly amount? $_____
2. Name _____ How dependent?_____
   Address _____ In what degree? _____
   Relation _____ In money or other aid?_____
   Age __ Birthplace___ In what weekly amount? $_____

Affiant further declares that ____he has no interest whatever in the prosecution of this claim.

_____

(Signature of Affiant.)

OATH.

Sworn to and subscribed before me this_____ day of_____, 191__. I have no interest whatever in the prosecution of this claim.

(Seal.) _____

(Notary Public.)

My commission expires_____

§ 218. Form of undertaker's certificate of death and cost bill. (c)

State of Ohio, _____ County, ss:

_____, of_____,

(Name of undertaker.)

says, that he is a duly licensed undertaker of_____, Ohio, at_____that as such he was required

(Street and number.)

on the_____day of_____, 191__, to prepare the dead body of_____for burial; that he placed said body in a coffin and placed said coffin, containing the said body, in a_____in _____cemetery at_____, State of_____.

Affiant further says that the following is a true and accurate account of articles furnished and services rendered in connection with the preparation and burial of said body, and the charges therefor; that such articles and services were required and furnished on account of the purpose above mentioned and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Date.	Items.	Amount.
_____ _____	_____	_____ _____
_____ _____	_____	_____ _____

(Items should be written out fully. Do not abbreviate.)

_____

(Signature of Affiant.)

OATH.

Sworn to before me and subscribed in my presence, this_____y of_____, 191__

_____

Notary Public.

(Seal.) My commission expires_____

§ 219. Form of lay witness's certificate in proof of th. (d)

Name of deceased in full_____

Sex_____Color_____

2. How long have you known the deceased?_____
3. (a) Age at death_____years. (b) Names and ages of children _____
_____
_____
4. Place of death (Give street number, city or town, and state):
Street_____City or town_____State_____
5. (a) Occupation at the time of death_____
(b) Nationality_____
6. Date when you first saw deceased after injury_____
7. Date when you last saw deceased after injury_____
8. Date of death_____
9. (a) What caused death?_____
(b) How long after injury?_____
10. Did you see the body of the deceased and did you identify it as that of the injured workman at_____
_____while in the employ of_____
of _____
11. Was a coroner's inquest held?_____Name of coroner _____ Address_____
12. What physicians attended deceased?
Name_____ Address_____
Name_____ Address_____
13. Was health of deceased impaired by intemperance or any pernicious habit?_____If so, what?_____
14. Have you any interest in this claim?_____
15. Have you stated all the material facts connected in any way with this death?_____
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?_____
Dated this_____day of_____, 191__

_____
Attending Physician.

OATH.

State of Ohio, _____ County, ss:

On this_____day of_____, A. D. 191__, personally appeared before me, the above named_____, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

_____
Notary Public.

My commission expires_____

§ 220. Form of physician's certificate in proof of death. (e)[21]

Fill in all blanks with ink, using pen or typewriter.

1. Name of the deceased in full_____
   Sex_____ Color_____
2. (a) How long have you known the deceased?_____
   (b) How long have you been medical adviser of deceased?_____
3. (a) Age at death_____years. (b) Married or single _____(c) Names and ages of children_____
   _____
   _____
4. Place of death (Give street number, city or town, and state):
   Street _____
   City or town_____State_____
5. (a) Occupation at the time of death_____
   (b) Nationality _____
6. Date of your first visit or prescription_____
7. Date of your last visit_____
8. Date of death_____
9. (a) State the remote cause of death_____
   _____
   _____
   (b) State explicitly the immediate cause of death_____
10. Did you see the body of the deceased and did you identify it as that of the injured workman at_____while in the employ of_____, of_____?
11. Was a coroner's inquest held?_____Name of coroner _____ Address_____
12. Was deceased attended by any other physician during last illness? If so, state his name and address_____
13. Was health of deceased impaired by intemperance or any pernicious habit?_____If so, what?_____
    _____
14. Have you any interest in this claim?_____
15. Have you stated all the material facts connected in any way with this death?_____
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?_____

Dated this_____day of_____, 191__

_____
Attending Physician.

Degree?_____Year_____College_____

---

[21] To be filled out by the attending physician of deceased.

OATH.

State of Ohio, _____ County, ss:

On this_____day of_____, A. D. 191__, personally appeared before me, the above named_____, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

_____

Notary Public.

My commission expires_____

§ 221. Form of employer's certificate and oath. (f)[22]

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer_____
   Address _____
2. Nature of business_____
3. Name of deceased_____Address when living_____
4. Age_____Sex_____Color_____Place of birth _____Married, single, or divorced?_____Wife or husband living?_____How many children living? Their ages?_____Which of them are dependent upon injured person for support?_____
   To what degree is each dependent?_____
   _____
5. What weekly wage was deceased receiving at time of injury? _____ 6. How long had he been receiving such wages? _____ 7. What work was he engaged in when injured? _____ 8. How long had he been doing this work? _____ 9. Was this his regular employment?_____
   If not, what was his regular employment?_____
   10. Was he skilled in the labor being performed when injury happened?_____ 11. When did he enter your employment?_____ 12. With whom was he employed previous to this?_____ How long?_____
13. How long did disability caused by injury last before death ensued?_____ 14. State if there was partial recovery and how long it lasted?_____ 15. Did deceased return

---

[22]All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank, using ink or typewriter.

to work?_____ How long did he remain at work before death?_____At what weekly wage?_____ 16. What impairment of earning capacity resulted from injury and lasted from date of return to work until death of deceased? Answer: He was able to earn_____per cent. and no more, of his former wage.

17. Give accurate description of injury which caused death_____
_____

18. Where was deceased taken after accident? (If to a hospital, give name and address)_____
_____

19. Who furnished medicines?_____ Address_____

20. Names of attending physicians:
Name_____ Address_____
Name_____ Address_____

21. Date of accident_____Hour of day_____M.

22. Place of accident: P. O._____, Street and No._____
County of_____, Ohio, _____Building.

23. Give full details as to how accident happened_____
_____

24. Was accident caused by fault of fellow workman _____

25. Did accident happen on the premises, or at the plant, or in the course of employment, or away from plant?_____

26. If away from the plant, state when, how and by whom injured?
_____

27. Names and addresses of witnesses:
Name_____ Address_____
Name_____ Address_____
Name_____ Address_____

28. Was accident caused by fault of machines or devices?_____

29. Name of machine, device, etc., causing accident?_____
_____ Condition?_____

30. Were all safeguards in their places at time of accident?_____

31. If any safeguard was removed, by whom was it removed?_____

32. Manager of said plant_____Address_____

33. Foreman or superintendent in charge of department where deceased was injured:
Name_____ Address_____

Witness:

(Signed)_____
Employer.

_____
_____

By_____
(Name and official position of person making this report.)

OATH.

State of Ohio, _____ County, ss:

Before me, a notary public in and for said county, on the_____ day of_____, 191__, personally appeared_____ who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence, are true.

_____
Notary Public.

(Seal.) My commission expires_____

§ 222. Form of physician's fee bill. (g)

The following is an itemized account of professional services rendered in connection with the treatment of injury to_____ _____ of _____
(Name of patient.) (Full address of patient.)
together with charges therefor:

Date.		Items.	Amount.	
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

_____
(Signature of Affiant.)

OATH.

State of Ohio, _____ County, ss:

_____, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of_____, 191__

_____
Notary Public.

(Seal.) My commission expires_____

§ 223. Form of druggist's cost bill. (h)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to

----------, of ----------
(Name of patient.) (Full address of patient.)
together with charges therefor:

Date.	Items.	Amount.
---------- ------	----------	-------- ------
---------- ------	----------	-------- ------

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.)

OATH.

State of Ohio, ---------- County, ss:

----------, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this------- day of----------, 191--

----
Notary Public.

(Seal.) My commission expires----------

§ 224. Form of medical fee bill and hospital charges. (i)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to ----------, of ----------
(Name of patient.) (Full address of patient.)
together with charges therefor:

Date.	Items.	Amount.
---------- ------	----------	-------- ------
---------- ------	----------	-------- ------

(Please receipt, if paid.)

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.)

OATH.

State of Ohio, ---------- County, ss:

----------, being first duly cautioned and sworn, says that---------- is---------- of ----------,
(Name of hospital) (Official position)

of _____, and as such duly authorized in the premises;
(Address.)
that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this_____ day of_____, 191__

_____
Notary Public.

(Seal.) My commission expires_____

§ 225. Form of certificate and oath of lay witness. (j)[28]

State Liability Board of Awards,
Columbus, Ohio.

1. Name of witness making this report_____
   Address _____
2. What is your present occupation?_____
   Name of employer_____ Address_____
3. Are you related in any way to deceased _____ If so, in what way?_____ What interest, if any, have you in this claim?_____
4. Name of deceased_____Address when living?_____
5. Age_____ Color_____ Nationality_____
   Married, single, or divorced?_____
   Wife or husband living?_____
6. What weekly wage was he receiving at time of injury?_____
7. How long had he been receiving such wages?_____
8. Has he any other source of income?_____ If so, how much and from what source derived _____ 9. What work was he engaged in at time of accident _____
10. How long had he been doing this work?_____
11. Was this his regular employment?_____ If not, what was his regular employment?_____ 12. Was he skilled in the work being done at time of accident?_____
13. Has he ever received any other injury to your knowledge? _____ If so, when, where and what was its nature? _____14. Has he ever had any serious sickness to your knowledge?_____ If so, what was it and how long did it

[28]All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given.

Fill out blank in ink, using pen or typewriter.

last _____ 15. Has he had any recent sickness to your knowledge?_____ If so, what was it and how long did it last?_____ 16. Was he in good health at time of accident?_____ 17. How long did disability caused by injury last before death ensued?_____ 18. State if there was partial recovery and how long it lasted_____ 19. Did deceased return to work?_____ How long did deceased remain at work?_____ At what weekly wage?_____

20. When at work he was able to earn_____per cent. of the wages received before injury, and no more. This statement is based upon actual earning capacity of deceased, and not merely upon the wages received. 21. Did deceased receive any compensation from the State Insurance Fund _____ How much?_____ 22. Was deceased a member of any lodge? _____ If so, what lodge or lodges?_____ Did deceased carry any accident insurance?_____ If so, how much and in what companies?_____

_____

23. The following persons were partly or wholly dependent upon deceased at the time of h____ death:

	Relation	Age	Place of Birth
Name _____			
Address _____	---	---	---

Partly or wholly _____In what amount per week? $_____
In money or other aid?_____What?_____

	Relation	Age	Place of Birth
Name _____			
Address _____	---	---	---

Partly or wholly _____In what amount per week? $_____
In money or other aid?_____What?_____

24. Describe injury which caused death of deceased_____

_____

25. Where was deceased taken after accident?_____

_____

(If to a hospital give name and address.)

26. Names of attending physicians:
Name_____ Address_____
Name_____ Address_____

27. Who furnished medicines _____ Address_____

28. Undertaker_____ Address_____

29. Date of accident_____ Hour of day_____M.

30. Did you witness the accident?_____

31. Give full details as to how accident occurred_____

_____

_____

32. What, in your estimation, was the immediate cause of the injury? _____
_____
33. Was accident caused by fault of any fellow workman of deceased?_____ If so, give name and address_____
_____
34. Did accident happen on the premises, or at the plant, or in the course of his employment, or away from the plant?_____
_____
35. If away from plant, state where and by whom he was injured?
_____
36. Give names of two other witnesses:
Name_____ Address_____
Name_____ Address_____
37. Was accident caused by fault of machines or devices?_____
38. Name of machine, device, etc., causing accident_____
Condition _____
39. Were all safeguards in their places at time of accident?_____
40. If any safeguard was removed, by whom was it removed?_____
41. Manager of said plant:
Name_____ Address_____
42. Foreman or superintendent in charge of department where deceased was injured:
Name_____ Address_____

In the presence of:

Signed_____

_____

_____

OATH.

State of Ohio, _____ County, ss:

Before me, _____, a notary public in and for said county, on this_____day of_____, 191___, personally appeared _____, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, which____he signed in my presence, are true.

_____
Notary Public.

(Seal.) My commission expires_____

CHAPTER XII.

THE WISCONSIN WORKMEN'S COMPENSATION ACT.

Sec.
226. Nature and scope of Wisconsin act.
227. Text of Wisconsin workmen's compensation act with construction of its provisions.
228. The opinion of the Supreme Court of Wisconsin sustaining constitutionality of act.
229. Decisions of commission—Construction of word "employment."
230. Decisions of commission—Powers of commission—Review of awards—Construction of word "employment."
231. Decisions of commission—Construction of "wilful misconduct."
232. Decisions of commission—Construction of word "support."
233. Decisions of commission—Construction of "casual employment" and time of serving "notice."
234. Decisions of commission—Meaning of "support" "dependents."
235. Procedure under the act—Rules of practice.
236. Circular letter to employers by the commission in explanation of its rules of practice.
Sec.
237. Formal procedure under Wisconsin act.
238. Form of employer's written acceptance. (a)
239. Form of employer's notice of withdrawal from operation of act. (b)
240. Form of notice that employer has filed notice of election to become subject to provisions of act. (c)
241. Form of notice by employer to the commission of compliance with the law. (d)
242. Form of first report of accident. (e)
243. Form of supplementary reports on accident. (f)
244. Form of answer to application. (g)
245. Form of notice by employé that he elects to be subject to provisions of act. (h)
246. Form of notice of employé upon entering employment that he elects not to be subject to act. (i)
247. Form of notice to employer of claim for injury under act. (j)
248. Form of application for adjustment of claim. (k)
249. Form of accident report of casualty company. (l)

Sec.
250. Form of notice of hearing. (m)
251. Form of subpoena. (n)
252. Form of admission of service. (o)
253. Form of notice of the entry of findings and award made by commission. (p)

§ 226. Nature and scope of Wisconsin act.—This act allows an election by the employer. Employés become subject to the provisions of the act thirty days after the employer's election to accept its provisions. By affirmative statement filed with his employer, the employé may become subject to the act immediately after his employer's election. The employé is also permitted, within thirty days after his employer's action, to file a refusal. The employer's liability to pay the compensation in lieu of other liability, occurs in cases where both employer and employé are subject to the provisions of the act and the injury is received while the employé is performing services growing out of and incidental to his employment, and the injury is proximately caused by the accident and not by wilful misconduct. Fees and costs of court proceedings on the award may be granted at the discretion of a reviewing court. The award is entitled to preference over the unsecured debts of the employer. The employer who does not elect to be bound to pay the compensation provided by the act is denied the right to the common-law defenses of assumption of risk and fellow servant[1] in suits brought by employés for injuries. In cases where the employer has filed his acceptance of the act, the refusal of an employé to come under its provisions restores to the employer the defenses of assumption of risk and fellow servant's negligence as to that particular employé.[1a]

The employer may not obtain exemption from these provisions by contracts, rules or regulations.

[1] When four or more workmen are employed, post p. 529.

[1a] The Industrial Commission of Wisconsin reports it as a fact that up to September 1, 1912, no employé has availed himself of this option.

A certified copy of the award may be filed by either party in the circuit court, whereupon the court shall enter judgment for the amount without notice, and this judgment shall have the effect of ordinary judgments entered on the trial of causes. The award or judgment on the award may be revived on the ground that the commission acted without or in excess of its powers, or that the award was procured through fraud, or that the finding of facts by the commission does not support the award. An appeal lies from the judgment of review in the same manner as appeals from the orders of the circuit court.

§ 227. Text of Wisconsin workmen's compensation act with construction of its provisions.—This act became effective September 1, 1911, and provides:

Section 1. Abrogation of Defenses.—There are added to the statutes thirty-two new sections to read: Section 2394—1. In any action to recover damages for a personal injury sustained within this state by an employé while engaged in the line of his duty as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

1. That the employé either expressly or impliedly assumed the risk of the hazard complained of.

2. When such employer has at the time of the accident in a common employment four or more employés, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

Any employer who has elected to pay compensation as hereinafter provided shall not be subject to the provisions of this section 2394—1.

Section 2394—2. No contract, rule, or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.

Note by the Committee—The object of these two sections is to destroy two of the common-law defenses now in existence in actions brought by an employé against his employer to recover damages for or on account of an injury. These two defenses are commonly known as assumption of the risk and negligence of a fellow servant. The tendency throughout the United States in the last ten years has been to destroy these defenses for the reason that they are considered unjust to employés. The following states have abrogated or modified the defense of fellow servant's negligence: Arkansas, Colorado, Florida, Georgia, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia and Wisconsin. The defense of assumption of the risk has been destroyed or modified in many of the above states. The bill now recommended absolutely destroys these two defenses in all actions between employer and employé on account of negligence. The destroying of these two defenses will affect principally the large employer in industries carried on with a large amount of machinery and many employés. There will be little or no effect upon the employer who has but one employé and a small amount of machinery. If the employer or employé is acting under the provisions of that part of the bill beginning with section 2394—4 known as the optional portion of the compensation bill, these defenses will have no force or effect, because no defenses apply to that portion of the bill. Consequently this part of the bill (sections 2394—1 and 2394—2) applies to all persons who have not elected to accept the provisions beginning with section 2394—4.

Under this provision of the bill (sections 2394—1 and 2394—2) in case of injury to an employé, in order to recover, it would be necessary for him to prove that his employer was negligent, that is, that there was want of ordinary care on the part of his employer which directly or proximately caused the injury complained of. If the employé succeeded in so proving, then the employer, in order to defeat recovery, would be allowed to show that the employé was so negligent, that is, that there was want of ordinary care upon the part of the employé which directly contributed to the injury. And if this were established it would defeat the action. Also, if it were shown that there was no want of ordinary care on the part of the employer which directly caused the injury, the employé would be defeated. It would therefore be absolutely necessary to establish two facts in order for an employé to recover: (1) That there was want of ordinary care on the part of the employer which directly caused the injury; (2) That there was no want of ordinary care on the part of the employé which directly contributed to his injury.

Under this proposed law, if the employé hereafter proves that his injury was directly caused by the negligence of a fellow servant, the employer will be liable. Also if the employé establishes

that his injury was directly caused by the want of ordinary care on the part of his employer, it will not be a defense to show that the employé assumed the risk of such want of ordinary care upon the part of the employer. The committee feels that it would be harsh to the average manufacturers having many employés, to wipe out these two defenses without offering some method whereby the liability incurred by the employer might be definitely fixed.

Note by the commission—The bill as first drafted did not contain the provision limiting the taking away of the defense only to employers having four or more employés in a common employment. The reason for the limitation may probably be found in the origin of the fellow servant doctrine, i. e., that the employé, being closely associated with his fellow servants, had a better opportunity to observe the habits of his fellow laborers and to guard against their negligence than had the employer. As labor conditions became more complex and great numbers of men were engaged in a common employment, the reason for the rule ceased to exist.

Under the act as passed the defense of assumption of risk is taken away from all employers, but the defense of the negligence of a fellow servant is taken away from those employers only who have four or more employés in a common employment.

Section 2394—3. Application to Railroads.—Except as regards employés working in shops or offices of a railroad company, who are within the provisions of subsection 9 of section 1816 of the statutes as amended by chapter 254 of the laws of 1907, the term "employer" as used in the two preceding sections of this act shall not include any railroad company as defined in subsection 7 of said section 1816 as amended, said section 1816 and amendatory acts being continued in force unaffected, except as aforesaid, by the preceding sections of this act.

Note by the committee—This section exempts from the two preceding sections railroad employés, who are included under what is known as the comparative negligence act, being chapter 254 of the laws of 1907, as they are in a separate class by themselves, and have a separate provision of the statute applicable to them.

This ends that part of the bill which is of general effect and includes everybody. The remaining sections, commencing with section 4, are applicable only to those who elect to come within their provisions. To those who do elect to come within their provisions, the remedies therein specified are exclusive and no other or further remedies are allowed.

Section 2394—4. Liability for Compensation.—Lia-

bility for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall exist against an employer for any personal injury accidentally sustained by his employé, and for his death, if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

1. Where, at the time of the accident, both the employer and employé are subject to the provisions of this act according to the succeeding sections hereof.

2. Where, at the time of the accident, the employé is performing service growing out of and incidental to his employment.

3. Where the injury is proximately caused by accident, and is not caused by wilful misconduct.

And where such conditions of compensation exist for any personal injury or death, the right to recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

Note by the Committee—Whenever this section applies—as it does apply to all who have elected to accept its provisions—compensation is paid whenever three facts appear, namely: (1) The employé was injured; (2) Such injury grew out of and was incidental to his employment; (3) Such injury was not caused by wilful misconduct. It makes no difference whose fault it was or who was to blame; it is sufficient that the industry caused the injury. "Wilful misconduct" as referred to in this section is conduct wherein the will of the person was exercised; in other words, intentional; and it may be such wilful misconduct on the part of a third person.

Section 2394—5. "Employer" Defined.—The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

1. The state, and each county, city, town, village, and school district therein.

2. Every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employé for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in the next section.

Note by the committee—This section defines the two classes of employers to which Section 2394—4 and the subsequent sections apply: (1) The state and each county, city, town, village and school district. As to these the bill is compulsory and the state and each subdivision must, in case of injury to its employés, pay the compensation as fixed; (2) All persons who shall have elected as provided in section 2394—6 or the following sections, to come under the provisions of this bill.

As to the right of the legislature to make an act compulsory as to the state and its subdivisions, there is little doubt; that it should be done is recognized by all. The moral aspect of this phase of the subject is well brought out in the presidential message of Theodore Roosevelt in 1908 when he wrote:

"The recent decision of the Supreme Court in regard to the employers' liability act, the experience of the Interstate Commerce Commission and of the Department of Justice in enforcing the interstate commerce and anti-trust laws, and the gravely significant attitude toward the law and its administration recently adopted by certain heads of great corporations, render it desirable that there should be additional legislation as regards certain of the relations between labor and capital, and between the great corporations and the public.

"The Supreme Court has decided the employers' liability law to be unconstitutional because its terms apply to employés engaged wholly in intrastate commerce as well as to employés engaged in interstate commerce. By a substantial majority the court holds that the Congress has power to deal with the question in so far as interstate commerce is concerned.

"As regards the employers' liability law, I advocate its immediate re-enactment, limiting its scope so that it shall apply only

to the class of cases as to which the court say it can constitutionally apply, but strengthening its provisions within this scope. Interstate employment being thus covered by any adequate national law, the field of intrastate employment will be left to the action of the several states. With this clear definition of responsibility the states will undoubtedly give to the performance of their duty within their field the consideration the importance of the subject demands.

"I also very urgently advise that a comprehensive act be passed providing for compensation by the government to all employés injured in the government service. Under the present law an injured workman in the employment of the government has no remedy, and the entire burden of the accident falls on the helpless man, his wife and his young children. This is an outrage. It is a matter of humiliation to the nation that there should not be on our statute books provision to meet and partially to atone for cruel misfortune when it comes upon a man through no fault of his own while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accidents (excluding, of course, accidents due to wilful misconduct by the employé) on the industry as represented by the employer, which in this case is the government.

"In all these countries the principle applies to the government just as much as to the private employer. Under no circumstances should the injured employé or his surviving dependents be required to bring suit against the government, nor should there be the requirement that in order to insure recovery negligence in some form on the part of the government should be shown. Our proposition is not to confer a right of action upon the government employé, but to secure him suitable provision against injuries received in the course of his employment. The burden of the trade risk shou'l be placed upon the government. Exactly as the working man is entitled to his wages, so he should be entitled to indemnity for the injuries sustained in the natural course of his labor. The rates of compensation and the regulations for its payment should be specified in the law, and the machinery for determining the amount to be paid should in each case be provided in such manner that the employé is properly represented without expense to him. In other words, the compensation should be paid automatically, while the application of the law in the first instance should be vested in the Department of Commerce and Labor. The law should apply to all laborers, mechanics, and other civilian employés of the government of the United States, including those in the service of the Panama Canal Commission and of the insular governments.

"The same broad principle which should apply to the government should ultimately be made applicable to all private employers.

Where the nation has the power it should enact laws to this effect. Where the states alone have the power they should enact the laws. It is to be observed that an employers' liability law does not really mean mulcting employers in damages. It merely throws upon the employer the burden of accident insurance agaisnt injuries which are sure to occur. It requires him either to bear or to distribute through insurance the loss which can readily be borne when distributed, but which, if undistributed bears with frightful hardship upon the unfortunate victim of accident.

"In theory, if wages were always freely and fairly adjusted, they would always include an allowance as against the risk of injury, just as certainly as the rate of interest for money includes an allowance for insurance against the risk of loss. In theory, if employés were all experienced business men, they would employ that part of their wages which is received because of the risk of injury to secure accident insurance. But as a matter of fact, it is not practical to expect that this will be done by the great body of employés. An employers' liability law makes it certain that it will be done, in effect, by the employer, and it will ultimately impose no real additional burden upon him."

Note by the commission—Officers of the state, counties, cities, towns, villages and school districts should take notice that this act applies to the state and all counties, cities, towns, villages and school districts, from and after its publication, to-wit, May 3, 1911. All accidents of employés of these governmental agencies received in the course of their employment should be reported to the commission by the proper officers, and arrangement should be made for compensation as provided in the act.

Section 2394—6. Election by employer.—Such election on the part of the employer shall be made by filing with the industrial accident board,[2] hereinafter provided for, a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section 2394—5 of this act to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he desires to with-

[2] Superseded by Industrial Commission of Wisconsin.

draw his election to be subject to the provisions of the act.

Note by the committee—The filing of the statement referred to in this section is the employers' voluntary election to pay the compensation scheduled. Under the same section, however, he is at liberty to withdraw his election at the end of the year or to continue it from year to year at pleasure. Owing to constitutional limitations it was necessary to frame an optional bill and such a bill can be successful only with the hearty co-operation of employers and employés. Therefore the committee deemed it wise to permit employers to withdraw their election when the act failed to work to their complete satisfaction. Compensation measures are purely experimental in this country and in order to persuade employers to try the experiment the committee feels that they should be given the right to return to old conditions after having tried the new and found them unsatisfactory. It will take but a short time, this committee believes, for employers to determine the extent of the burden of operating under the act and to find whether the new method is more advantageous than the old.

Section 2304—7. "Employé" defined—The term "employé" as used in section 2394—4 of this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, town, village, or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, town, village, or school district therein, provided that one, employed by a contractor, who has contracted with a county, city, town, village, school district, or the state, through its representatives, shall not be considered an employé of the state, county, city, town, village, or school district which made the contract.

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employés), but not including any per-

son whose employment is but casual or is not in the usual course of the trade, business, profession, or occupation of his employer.

Section 2394—8. Election by Employé.—Any employé as defined in subsection 1 of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employé as defined in subsection 2 of the preceding section shall be deemed to have accepted and shall, within the meaning of section 2394—4 of this act, be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

1. The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

2. Such employé shall not, at the time of entering into his contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act; or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of this act, such employé shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

Note by the committee—These two sections define the two classes of employés to whom section 2394—4 and the subsequent sections apply. As to persons in the service of the state, counties, towns, villages or school districts, except the officials, the act is compulsory. There can be no serious doubt that the legislature has a right to deprive any employé of this state of any right of action for and on account of damages for an injury, because no such cause of action exists generally, except based upon the statute. Then, all employés are within the provisions of sections 2394—4 and subsequent sections of this act, unless at the time of entering into such employment the employé gives the employer written notice that

he elects not to be subject to the provisions of the act. In those cases in which the contract of hiring was made before the time that the employer elected to come under the act, the employé is to have the right to elect to be subject to such provisions. If he gives no notice of such election but remains in the service of the employer for thirty days after the latter files notice of his election, then the employé shall be subject to the act. The New York law provides that this contract between the employer and the employé shall be in writing, acknowledged, and filed with the county clerk in every case. The committee feels that it would be a great hindrance to the ordinary conduct of business, if, whenever an employé desired to hire out to an employer, it became necessary to draw up a formal contract before he could receive compensation under the act. As provided here, when a man hires out to an employer who has elected to come under the provisions of the act, by the mere fact of hiring out he waives his right to any common-law damages in case of injury, and accepts the compensation. This will not change the present way of doing business, and if the provisions for compensation are fair, as the committee thinks they are, an appeal to workmen as being fair and furnishing much better average compensation in fact than under the present system, the reasonable employé will be glad to accept the provisions of the bill and thus be assured of the compensation provided. This law must work automatically as nearly as possible.

These sections also provide that the employé must elect at the time of hiring instead of after the injury. The election here mentioned means the choice, or right, to sue at common law for an injury, or to accept in advance the scale of compensation set forth in the act. The employé, when his employer elects to come under the act, must take one or the other. He can not take both. If he chooses to accept the compensation at the time he hires out, then he waives his right to sue if he is injured and can have the compensation only. If he chooses to retain his right to sue at common law, then he can not claim the compensation. It is important to state here that the waiver by an employé of his common-law right binds his widow or dependents in case of fatal accident. The English law, contrary to the Wisconsin act, allows the election after the injury. The German law is compulosry both as to employers and employés so that there is no election.

Probably no other single phase of this subject of compensation has given rise to more earnest thought and careful deliberation on the part of the committee than this question of election before or after the accident. The conclusion unanimously reached that such election should be made at the time of hiring can be sustained upon the ground that it prevents great waste. If the election is made after the injury, the employé has two

options: (a) He can accept the compensation under this act; (b) he can sue the employer in court and recover unlimited damages if he is able to show that his injury was caused by the fault of his employer and through no fault of his own. This means that in those cases where the injury was caused solely by the fault of the employé and also in those cases where the injury was purely an accident (a hazard of the industry, and no fault of any one) and also in those cases where injury was caused partly by the fault of the employè and partly by the fault of the employer, the employer would be compelled to pay compensation. Why? The employé in all such cases would elect to accept compensation, knowing that he could not recover in court. In the one case where the injury was caused solely by the fault of the employer and without fault of the employé, he would not accept the scheduled compensation but would sue at common law in almost complete confidence of victory. He would have every reason to expect a jury to grant much larger damages than would be possible had he accepted compensation.

Under this condition of affairs in which the injured employé might elect after injury to sue or accept compensation, what would be the result? Whenever an injury occurred, the employer in order to protect himself from a large verdict from a jury, would be forced to employ lawyers to investigate the cause of the accident, secure affidavits from all persons knowing anything about the circumstances and then have these lawyers prepare to resist the claim of the employé. Thus there would be incurred a heavy expense, which instead of adding to the amount paid the employé, would cut it down or else cut off completely his chance for financial assistance. The legal fight of the employer would add very greatly to his burden and to the burden borne by the industry. With election after the accident, therefore a great share of the waste of the present system would be continued instead of diminished.

Election before the accident may be sustained upon a still firmer ground. Election after the accident would benefit a few employés at the expense, in a great measure, of the many. It would be only those employés whose injury was caused by the sole fault of the employer without any fault on the part of the employé, who could be benefited by the deferred election: it is estimated that these cases would be only about 10 per cent. of the whole. The fighting of these claims of the 10 per cent. and the occasional payment of large verdicts, would mean that the 90 per cent. would have to accept less compensation than that now scheduled. In other words, the many would lose in order that the few might gain. It must be remembered that there is necessarily a limit to the burden that the employer or the industry can bear. If a large part of that burden is wasted, the remainder to be used for compensation must be less. By providing for pre-election (election at the time of the hiring),

instead of deferred election (election at the time of the injury), the committee felt justified in increasing the compensation, in case of death or total incapacity, from three to four years' earnings and in raising the minimum from $1,000 to $1,500. If the election should be changed from the time of hiring to the time of injury, then, in the opinion of the committee, the compensation schedule, in justice to employers, should be lowered. We quote Prof. C. R. Henderson, one of the best known authorities on workingmen's compensation: "What we must now seek is protection for all injured workmen—not revenge for the few."

Another most vital truth regarding election after the injury is that it introduces an element of uncertainty as to the amount to be received by the injured employé. This condition causes unrest and dissatisfaction. To illustrate: "A," "B" and "C" are seriously injured under what to the average person appears to be similar circumstances, and to the same extent. "A" elects to sue and to decline to accept compensation. The case is tried and is carried to the Supreme court where it is finally decided that "A" can not recover; that while his injury was caused by the fault of his employer, still "A" himself was partly at fault. So "A" and his family secure no relief after years of waiting and suffering. "B," apparently injured in the same manner and to the same extent as "A," also elects to sue at common law and to refuse compensation. He recovers $12,000 and this judgment is sustained in the Supreme court on the ground that his injury was caused by the fault of the employer without any fault on the employé's part. "B" therefore gets $12,000, less of course, the fee of his attorney and expenses of the suit. "C" whose case is similar to that of "A" and "B," elects immediately after the accident to accept his compensation and gets the maximum, $3,000, without delay: Result: "A" and his friends are dissatisfied and feel bitter toward employers in general and the courts in particular. To some extent "C" feels the same way because of the large sum recovered by "B."

This committee feels that compensation should be certain as to all and certain as to the amount so that all employés and others will understand why the dependents of one man get $1,500 in case of death while the dependents of another get $2,000 or $3,000, just as clearly as they now understand why one workman gets $2 a day and another more skillful workman gets $4 a day. The committee appreciates the force of the argument "that a totally incapacitated man might suffer an injustice; that the maximum allowed under the act would not be just compensation." On the other hand, it knows that under the present system the totally incapacitated employé, in the majority of cases, gets absolutely nothing. Under this act, while he may not get full compensation, he will always get some compensation, and that, practically, without expense to him, and at the time when he most needs it.

Section 2394—9. Scale of Compensation.—Where liability for compensation under this act exists, the same shall be as provided in the following schedule:

1. Such medical and surgical treatment, medicines, medical and surgical supplies, crutches, and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer; and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same.

2. If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employé leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(a) If the accident causes total disability, sixty-five per cent. of the average weekly earnings during the period of such total disability; provided that, if the disability is such as not only to render the injured employé entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance after the first ninety days shall be increased to one hundred per cent. of the average weekly earnings.

(b) If the accident causes partial disability, sixty-five per cent. of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods, of each such total or partial disability shall be in accordance with said subdivisions (a) and (b) respectively.

(d) Said subdivisions (a), (b), and (c) shall be subject to the following limitations:

Aggregate disability indemnity for injury to a single

employé caused by a single accident shall not exceed four times the average annual earnings of such employé.

The aggregate disability period shall not, in any event, extend beyond fifteen years from the date of the accident.

The weekly indemnity due on the eighth day after the employé leaves work as the result of the injury may be withheld until the twenty-ninth day after he so leaves work; if recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability still continues, it shall be added to the weekly indemnity due on said twenty-ninth day and be paid therewith.

If the period of disability does not last more than one week from the day the employé leaves work as the result of the injury no indemnity whatever shall be recoverable.

3. The death of the injured employé shall not affect the obligation of the employer under subsections 1 and 2 of this section, so far as his liability shall have become payable at the time of death; but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity:

(a) In case the deceased employé leaves a person or persons wholly dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of subsection 2 of this section, to make the total compensation for the injury and death (exclusive of the benefit provided for in subsection 1), equal to four times his average annual earnings; the same to be payable, unless and until the board shall direct payment in gross, in weekly installments corresponding in amount to the weekly earnings of the employé.

(b) In case the deceased employé leaves no one

wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of four times such average annual earnings of the employé as the average annual amount devoted by the deceased to the support of the person or persons so partially dependent on him for support bears to such average annual earnings, the same to be payable, unless and until the board shall direct payment in gross, in weekly installments, corresponding in amount to the weekly earnings of the employé; provided that the total compensation for the injury and death (exclusive of the benefit provided for in said subsection 1) shall not exceed four times such average annual earnings.

(c) Liability for the death benefits provided for in subdivisions (a) and (b) respectively shall only exist where the accident is the proximate cause of death; provided that, if the accident proximately causes permanent total disability, and death ensues from some other cause before disability indemnity ceases, the death benefit shall be the same as though the accident had caused death; and provided further that, if the accident proximately causes permanent partial disability and death ensues from some other cause before disability indemnity ceases, liability shall exist for such percentage of the death benefits provided for in said subdivision (a) or (b) (as the case may be), as shall fairly represent the proportionate extent of the impairment of earning capacity caused by such permanent partial disability in the employment in which the employé was working at the time of the accident.

(d) If the deceased employé leaves no persons dependent upon him for support, and the accident proximately causes death, the death benefit shall consist of the reasonable expense of his burial, not exceeding $100.

Note by the Committee:—This section provides for the amount of compensation that shall be paid to an injured employé or his

dependents. This scale is more liberal than any other scale that has heretofore been enacted or proposed in any state. The New York law provides for payment of 50 per cent. of the average weekly earnings, and in case of death the payment of 1,200 times the average weekly earnings, with a maximum of $3,000, but no minimum. Under the Wisconsin act the employer must provide medical and surgical treatment, medicine, etc., for ninety days. This provision is made for two reasons: First: As a rule an employer is more competent to judge the efficiency of the doctor employed and to provide efficient medical and surgical treatment. Second: It is to the interest of the employer to furnish the very best medical and surgical treatment, so as to minimize the result of the injury, and to secure as early a recovery as possible. The more serious the result of the injury, the more the employer must pay. Also by this means he obtains a complete knowledge of the exact condition of the injured employé.

This section also provides where there is total disability, for the payment of 65 per cent. of the average weekly earnings during the period of such total disability. But no wages less than $375 per year shall be considered, nor more than $750. In case the injury renders the employé entirely helpless, the indemnity is increased to 100 per cent. of the average weekly earnings. Where the injury causes only partial disability, 65 per cent. of the weekly loss in wages is paid. The only limitations are that the aggregate disability for injury to a single employé caused by a single accident shall not exceed four times the average annual earnings. This refers to those rare cases where in one accident the employé receives two distinct injuries. Also there is a limitation that the weekly indemnity due on the eighth day after the injured employé leaves work shall be held until the twenty-ninth day, and if recovery shall have occurred within that time, the first week's indemnity shall not be paid. The object of this is to prevent malingering. A man receiving a slight injury that might disable him for three or four days, might pretend to be disabled for a week in order to receive the first week's indemnity. But it is assumed that he would not lay up for four weeks in order to get this first week's indemnity. This reserves to those who are seriously injured, the right to receive their compensation from date of the injury. As medical and surgical treatment are furnished in all cases it seems only fair that in minor cases not causing disability for a week, compensation should not be recovered.

Subsection 3 provides for death benefits, and this is based upon four times the average annual earnings, but not less than $1,500, nor more than $3,000. This sum is to be paid in the same manner as wages. The object of this is to furnish the compensation in the same method that the family has been in the habit of receiving support. A deviation from this rule can be made, however, when

the Industrial Accident board is convinced that it is to the best interest of the parties to order that the amount be paid in a lump sum.

In case there are no dependents, the death benefit is simply the reasonable expense of burial not exceeeding $100.

In subdivision "c" of subsection 3, provision is made for those cases where death may ensue after injury and still not be caused by the injury. Any comprehensive compensation scheme should provide for the dependents in case of the death of a person who has been totally disabled and who is receiving compensation at the time of death but whose death results from a cause not connected with the original injury. The compensation is fixed, in fact, at the time of the injury, and the further fact that it is paid in installments instead of a lump sum should not defeat the dependents of their right to support if death of the injured person from any cause follows. This same provision in modified form is carried into those cases where there is only permanent partial disability. The justice of these provisions must appeal to those giving the matter broad consideration.

Section 2394—10. Method of Computation—1. The weekly earnings referred to in section 2394—9 shall be one fifty-second of the average annual earnings of the employé; average annual earnings shall not be taken at less than $375, nor more than $750, and between said limits shall be arrived at as follows:

(a) If the injured employé has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

(b) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or in similar employment in the same or a neighboring place shall have

earned in such employment during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employé can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class working in the same or most similar employment, in the same or a neighboring locality, shall reasonably represent the annual earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time.

(d) The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at acc rding to, and subject to the limitations of, the previous provisions of this section.

2. The weekly loss in wages referred to in section 2394—9 shall consist of such percentage of the average weekly earnings of the injured employé, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she is living at the time of his death.

(b) A husband upon a wife with whom he is living at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of the parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employé; and in such other cases, if there is more than one person wholly dependent, the death benefits shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof; and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

4. No person shall be considered a dependent unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister.

5. Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees; provided that in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the same as is then unpaid shall be recoverable by and payable to his personal representative in gross. No person shall be excluded as a dependent who is a non-resident alien.

6. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employé.

Note by the Committee:—This section provides the manner in which the weekly earnings of the injured employé may be arrived at, and the rules as laid down are as fair and as definite as the committee could reach. Subsection 3 specifies who conclusively shall be presumed to be solely and wholly dependent for support upon the deceased employé. The persons therein mentioned are those so considered under the present system. But very little departure from present rules is found in this provision.

In subsection 6 reference is made to a compromise of the claim of the employé or his dependents for compensation. This provision was inserted after a considerable debate. It was felt that there should be no compromise; that it was unfair to the employé, or in fact to either party. Both employers and employés object very much to a compromise of this compensation and the intention of the whole bill is that the injured employé or his dependents shall receive the full compensation. At the same time it is realized that there may be honest differences of opinion as to the amount of such compensation, and when a compromise of the differences is made fairly and honestly, it should stand. On the other hand, the widow and her children are clearly entitled to $1,500, and if it should be compromised for $1,000, such a compromise should not be allowed to stand. As a safeguard against such compromises, they are made subject to review within one year by the Industrial Accident board.

Section 2394—11. Notice of Injury.—No claim to recover compensation under this act shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured or by some one on his behalf, or in case of his death, by a dependent or some one on his behalf, shall be served upon the employer, either by delivering to and leaving with him a copy of such notice, or by mailing to him by registered mail a copy thereof in a sealed and postpaid envelope

addressed to him at last known place of business or residence. Such mailing shall constitute completed service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days, shall be equivalent to the notice herein required; and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collection of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby; and provided further, that if no such notice is given and no payment of compensation made, within two years from the date of the accident, the right to compensation therefor shall be wholly barred.

Note by the committee:—This section provides for the notice of accidents that must be given to employers. This phase has caused considerable trouble under different compensation acts in Europe, and it is a hard subject satisfactorily to settle. The above provisions are recommended as reasonable. In justice to employers there should be a time when, if no notice has been given, a claim for compensation should be barred, and the committee has fixed that time at one year from the date of the accident.

Section 2394—12. Examination by Physician.—Wherever in case of injury the right to compensation under this act would exist in favor of any employé, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial accident board, or a member or examiner thereof. The employé shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employé, after such written request of the employer, shall refuse to submit to such examination, or shall in any way ob-

struct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

Note by the committee:—In this section there is a provision for examination of the injured person by a physician employed by the employer. The employé, however, is protected by the right to have his own physician present. In case any member of the Industrial Commission of Wisconsin, or its examiner orders an injured employé to be examined, and he refuses, his right to compensation during the period of such refusal shall be barred. These provisions, we think, are just and right; if the right to compensation were merely suspended during the time that the employé refused to be examined, the employer would be without protection against unjust claims. If the injured employé recovered there would be no way of telling the extent of his injury or disability at the time he refused to be examined. This section also provides that physicians so employed may be required to testify as to the results of examinations.

Section 2394—13. Creation of Board.—There is hereby created a board which shall be known as the industrial accident board.[2a] The commissioner of labor and industrial statistics shall be ex-officio a member of such board. He may, however, authorize the deputy commissioner to act in his place. Within thirty days after the passage of this act, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve four years. Thereafter such two members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same man-

[2a] The Industrial Accident Board has been superseded by the Industrial Commission of Wisconsin. See § 2394—42, ch. 485, 485, Laws of Wisconsin for 1911.

ner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. Each member of the board, including the said commissioner, shall receive an annual salary of $5,000. This salary shall, as to the commissioner of labor and industrial statistics, be in full for his services as such commissioner of labor and industrial statistics.

Section 2394—14. Organization of Board.[8]—The board shall organize by choosing one of its members as chairman. Subject to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required, such examiners to be exempt from the operation of chapter 363 of the laws of 1905, and amendatory acts. It may also appoint a secretary, who shall be similarly exempt, and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed. It shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "Industrial Accident Board—Wisconsin—Seal." It shall keep its office at the capitol, and shall be provided by the superintendent of public property with a suitable room or rooms, necessary office furniture, stationery, and other supplies. The members of the board and its assistants

[8] Board superseded by Industrial Commission of Wisconsin. See § 2394—42, ch. 485 Laws Wis. 1911.

shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state, the same as other general state expenses are audited and paid.

Section 2394—15. Submission of Disputes.—Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to said industrial accident board in the manner and with the effect provided in this act. Every compromise of any claim for compensation under this act shall be subject to be reviewed by, and set aside, modified, or confirmed by the board upon application made within one year from the time of such compromise.

Section 2394—16. Notice of Hearing.—Upon the filing with the board by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing, embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board and hearings may be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the board; but the

board may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and pay-roll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time direct any employé claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby, shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the circuit court of any county.

Section 2394—17. Findings and Awards.—After final hearing by said board, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its awards, which shall state its determination as to the rights of the parties. Pending the hearing and determination of any controversy before it, the board shall have power to order the payment of such, or any part, of the compensation, which is or may fall due, as to which the party from whom the same is claimed does not deny liability in good faith within ten days after the giving of notice of hearing provided for in the preceding section; and if the same shall not be paid as required by such order, the facts with respect to the liability therefor, and the determination of the board as to the rights of the parties, shall be embraced in, and constitute a part of its findings and awards; and the board shall have the power to include in its award, as a penalty for non-compliance with any such order, not exceeding twenty-five per cent. of each amount which shall not have been paid as directed thereby.

Note by the Committee:—These sections provide for the tribunal by which all disputes between employer and employé in regard to compensation shall be settled. In order to obtain uniformity of decisions and uniformity of administration of the bill, it was deemed necessary to have a state board. The success of this measure will depend to a great extent upon the character of the men who constitute this board. Their salary, therefore, is placed at a sum, which in the opinion of the committee, should secure thoroughly competent men; men who will have the confidence of both employer and employé, who will be in sympathy with the objects intended to be attained, and who will have ability to carry out the provisions of the act in such a manner as will meet with the approbation of both employer and employè. There undoubtedly will be a great many disputes, especially in the early administration of the bill, for this board to decide, and in order to facilitate its work, it is empowered to employ, "from time to time," expert examiners, who can take the testimony, examine the situation, and report to the board. There may be times when the board will be compelled to have several examiners for a week, two weks, or a month at a time, and at other times it may need more. Provision of this kind is absolutely necessary. These disputes must be settled promptly and summarily, so that the injured employé may have the benefit of his compensation.

The expense of the administration of the act is fixed upon the state. The state can well afford to bear this expense, as its courts will be relieved of a large amount of work, and the burden now placed upon taxpayers by the trial of negligence cases will be minimized. This committee hopes that the tendency of this act will be to produce good will between employer and employé, and to lessen the cases of hardship among dependents of injured employés. In taking into consideration the state's many vital interests in the welfare of the workman and his family, this committee concludes that the state may well afford to bear the expense of the administration of this bill.

Section 2394—18. Filing of Judgment.—Either party may present a certified copy of the award to the circuit court for any county, whereupon said court shall, without notice, render a judgment in accordance therewith; which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

Section 2394—19. Review by Court.—The findings

of fact made by the board acting within its powers shall, in the absence of fraud, be conclusive; and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within twenty days from the date of the award, any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the board for the review of such award, in which action the adverse party shall also be made defendant. In such action a complaint, which shall also state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the board, or any member of the board, shall be deemed completed service. The board shall serve its answer within twenty days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to said complaint. With its answer, the board shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its findings and award. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the board acted without or in excess of its powers.

2. That the award was procured by fraud.

3. That the findings of fact by the board do not support the award.

Note by the committee:—The finding of the commission, in the absence of fraud, is made absolutely conclusive by this section. The award is reviewable only on three grounds: (1) That the

commission acted without or in excess of its powers; (2) that the award was procured by fraud; (3) that the findings of fact by the commission do not support the award. This review does not allow any re-trial of the case as presented to the commission. The facts found by the commission are conclusive, and the review that is allowed in those cases where the findings of fact do not support the award, would occur only where the commission had not given proper consideration to the act itself. In other words, the court will review only questions of law included in grounds 1 and 3 upon which an award may be reviewed. The fraud alluded to in the second ground will be only such as was perpetrated in procuring the award and will not include false testimony of any party, because such questions all will be decided conclusively by the commission. The object of having the action to review brought against the commission is twofold: (1) If any error is made it will be an error made by the commission, the fraud of the commission that may be subject to review. Consequently, the commission should defend its own action, and this will be done at the expense of the state. (2) To relieve the party in whose favor the award was made of the expense of litigation in the circuit and Supreme Courts. This is in conformity with the practice adopted in the Railroad Rate Commission Law. The commission defends its own orders.

Section 2394—20. Remanding of Record.—Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board, for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties.

Section 2394—21. Appeal from Award.—Said board, or any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the circuit court; but all such appeals shall be placed on the calendar of the Supreme

Court and brought to a hearing in the same manner as state causes on such calendar.

Section 2394—22. Fees and Costs.—No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court, but no costs shall be taxed against said board. In any action for the review of an award, and upon any appeal therein to the Supreme Court, it shall be the duty of the attorney general, personally, or by an assistant, to appear on behalf of the board, whether any other party defendant shall have appeared or be represented in the action or not. Unless previously authorized by the board, no lien shall be allowed, nor any contract be enforceable, for any contingent attorney's fee for the enforcement or collection of any claim for compensation where such contingent fee, inclusive of all taxable attorneys' fees paid or agreed to be paid for the enforcement or collection of such claims, exceeds ten per cent. of the amount at which such claim shall be compromised, or of the amount awarded, adjudged, or collected.

Note by the commission:—These sections provide for the proper judgment in the circuit court and the remanding of the case to the commission, and then for appeal to the Supreme court and the practice thereof.

Section 2394—23. Assignment of Claim.—No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged, or paid, be subject to be taken for the debts of the party entitled thereto.

Note by the Committee:—This section provides that no claim for compensation shall be assignable, this being necessary in order

to protect the injured employé and his dependents. If the claim were made assignable he could sell it for a small sum, and thus deprive his dependents of benefits to which they are entitled. The compensation also is made exempt from his debts on the same principle that wages now are made exempt. Provision also is made to limit the amount of attorney's fees. The justice and fairness of this should be conceded by all. The New York law has a provision of similar import.

Section 2394—24. Preference of Claim.—The whole claim for compensation for the injury or death of any employé or any award or judgment thereon, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted, but this section shall not impair the lien of any judgment entered upon any award.

Note by the Committee:—After a great deal of discussion this was the only security that the committee was able to devise. It seems to us to be practicable for the injured employé, and to give him the same preference that he now has for his wages.

Section 2394—25. Third Party Liability.—The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment of any cause of action in tort which the employé or his personal representative may have against any other party for such injury or death; and such employer may enforce in his own name the liability of such other party.

Note by the Committee:—This section provides for those cases where even though the injury or death be caused by the tort of a third person, still the employer must pay compensation under this act. In this section the employé is given power to elect to sue at law for the tort against the third person or to claim his compensation. If he claims his compensation, then his employer is to have the right in his own name to enforce the liability against the third person.

Section 2394—26. Insurance Provisions.—Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance of employers' liability, nor the right of

the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their families, dependents, or representatives, of sick, accident, or death benefits in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contribution, or other benefits whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employé, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Section 2394—27. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of this act, each employé shall constitute a separate risk within the meaning of section 1898d of the statutes.

Note by the Committee:—Industrial insurance is the name most commonly applied to workmen's compensation acts, and conveys the meaning that there is some plan of insurance. In the first tentative bills of this committee, the plan of insurance was brought forth, but after full and mature discussion it was decided that it would be better to leave the employer free to determine for himself the best means of taking care of the liability created. The committee felt that to lay down a plan of insurance would be to put on a limitation that might handicap employers and leave them at the mercy of a certain class of insurance companies. We recognize the great benefits to employés of what are known as sick, accident, and death benefit societies now in effect in many large institutions, and we much prefer to leave this whole matter open in such a way as to encourage the formation of these sick, accident, and death benefit societies. Under section 26 we have given to employers an opportunity to organize, under the laws of this state, mutual insurance companies to carry the new risk. Strong mutual insurance companies clearly have been shown to be the cheapest, safest, and most reliable method by which the risk herein created can be taken care of.

Section 2394—28. Release from Liability.—Any employer against whom liability may exist for compensation under this act may, with the approval of the industrial accident board, be relieved therefrom by:

1. Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per centum per annum, with such trust company of this state as shall be designated by the employé (or by his dependents, in case of his death, and such liability exists in their favor), or in default of such designation by him (or them) after ten days' notice in writing from the employer, with such trust company of this state as shall be designated by the board; or

2. By the purchase of an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employé, or his dependents, or the board, as provided in subsection 1 of this section.

Note by the Committees—The mutual interests of employer and employé are safeguarded in an important way in this section. It enables the employer, who is liable for compensation and who

desires to be relieved thereof, to deposit the lump sum to cover such liability, with a trust company or with an insurance company with directions to make weekly payments as specified in this act, and thereby be released. This is also a convenience and a safeguard to the employé, as the money to be paid him is protected by state laws in such a way as to eliminate danger of loss.

Section 2394—29. Posting of Notices.—The board shall cause to be printed and furnished free of charge to any employer or employés such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his notice of withdrawal of such election, and the date of the filing thereof; and books in which shall be recorded all orders and awards made by the board, and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employés, by posting such notice thereof in several conspicuous places in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective; and the board shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and notices of withdrawal of election, and of the time of the filing of the same, shall conclusively be imputed to all employés.

Note by the Commission:—This simply provides that the Industrial Commission of Wisconsin shall furnish notices to employers

and employés of the election by the former to come within the provisions of this act. It must also furnish effective notice of the withdrawal of any election by an employer. This section also provides for the keeping of a record of employers who have filed their election, and those who have filed notice of withdrawal. A book in which the orders and awards of the commission are to be filed, is required by this section. It was deemed best by the committee that these notices of election and withdrawal should be given officially by the board, because any other plan might lead to uncertainty as to when an employé was under the act. Under any other plan the only way to determine whether an employé was within the provisions of the act would be by a suit in the courts, which would occasion long and disastrous litigation.

Section 2394—30. Appropriation.—A sum sufficient to carry out the provisions of this act is hereby appropriated out of any money in the treasury not otherwise appropriated.

§ 228. The opinion of the Supreme Court of Wisconsin sustaining constitutionality of act.—The constitutionality of this statute was determined in a suit brought by Edward G. Borgnis against the Falk Company, [3a]to restrain the defendant from adopting the workmen's compensation law during the continuance of the contract of employment of the complainant. The lower court sustained the contention of the complainant. There was an appeal from the decree which resulted in a reversal. The opinion of Chief Justice Winslow and the concurring opinions of Justices Barnes and Marshall are able presentations of the fundamental principles of these laws and are therefore inserted in their entirety. Says the Chief Justice:

"We are not certainly advised as to the exact ground on which the decision below was reached, but we assume that it was on the theory that the law in question was a valid law; that it was retrospective in its effect, and that if the defendant elected to become subject to the act the plaintiffs would be compelled to breach their existing contracts or submit to the terms of the act, and thus lose valuable rights; and hence that equity might

[3a] Borgnis v. Falk Company, 147 Wis. 327, 133 N. W. 209.

and should restrain their employer from electing to come under the law until their existing contracts had expired.

"It seems to be true that this action might very well be disposed of without considering the question of the validity of the act in question. Ordinarily under such circumstances that course would be the proper one to pursue, for the question of the constitutionality of a statute passed by the Legislature is not one to be lightly taken up, and generally such a question will not be decided unless it be necessary to decide it in order to dispose of the case. There are circumstances here present, however, which seem to call very loudly for immediate consideration of the question of the validity of the act in question, if under any view of the case it can be considered as involved. The legislature, in response to a public sentiment which cannot be mistaken, has passed a law which attempts to solve certain very pressing problems which have arisen out of the changed industrial conditions of our time. It has endeavored by this law to provide a way by which employer and employed may, if they so choose, escape entirely from that very troublesome and economically absurd luxury known as "personal injury litigation," and resort to a system by which every employé not guilty of willful misconduct may receive at once a reasonable recompense for injuries accidentally received in his employment under certain fixed rules, without a lawsuit and without friction.

"A considerable number of employers have accepted the terms of the act, but unquestionably many are waiting until the question of the constitutionality of the act be authoritatively settled by this court. Nor is this attitude either blameworthy or surprising. If an employer elects to accept the act and proceeds to pay out the sums which it requires for a year or more, and then the act should be declared unconstitutional, it might

well be that he would have paid out considerable sums which under the former system he would not be required to pay at all, because he was not negligent, and that he would also be subject to suits to recover additional sums by those who, without contributory negligence, had suffered injury and had received compensation under the law. The situation is unquestionably one of much doubt and uncertainty among the great industries of the state, and it must remain such until this court has spoken. Many employers of labor who have not accepted the law have taken that course, not because they have chosen definitely to decline the terms of the law, but because they do not know whether they will be protected if they accept and act under it. Such a condition of uncertainty ought not to be allowed to exist, if it can be removed. This court can not properly decide questions which are not legitimately involved in bona fide lawsuits, but it may properly decide all questions which are so involved, even though it be not absolutely essential to the result that all should be decided. The validity of the statute in question is a matter which may be legitimately considered in the decision of this case. If the statute be unconstitutional and void, then it is certain that the plaintiffs have no cause of action, because an election to accept the terms of a void statute could harm no one. Impressed with this view of our duty under the circumstances, we advanced the present case upon the calendar, and invited argument upon the main question as to the constitutionality of the statute, not only from the Attorney General on behalf of the state, but from any attorney interested in the question. In pursuance of this invitation the Attorney General and the industrial commission filed briefs, and oral argument was made by the Deputy Attorney General. The case has been fully presented, therefore, both by brief and argument, and we are now to consider whether there be any solid foundation for

the attack made upon the law. In undertaking this task it will be necessary first to set forth in some detail its fundamental provisions.

"It adds 32 new sections to the statutes, the first 8 of which sections are as follows: * * *

"By a later act passed at the same session of the Legislature (chapter 485, Laws 1911) an industrial commission, composed of three members, was created, which, among numerous other duties, is required to perform all the duties vested in the industrial accident board aforesaid, and thus the last-named board has passed out of existence. In re Filer & Stowell Co., (present term) 132 N. W. 584. The act is quite long, as the complicated and delicate subject with which it deals manifestly requires, but its general purport and effect so far as this case is concerned may be briefly summarized:

"It creates an administrative board to carry its provisions into effect. It divides all private employers of labor into two classes: (1) Those who elect to come under the law; and (2) those who do not so elect. It takes away the defenses of assumption of risk, and negligence of a coemployé from the second class (except that where there are less than four coemployés the latter defense is not disturbed), but leaves both defenses intact to the first class. It prescribes the manner in which an employer may elect to come under its terms, and how an employé may make his election, and when silence on the part of the employé will be considered an election; but it does not in terms compel either employer or employé to submit to its provisions. It then provides a comprehensive scheme by which, after both parties have so elected, any substantial injury, whether the result be fatal or not, received by the employé in the course of or incidental to his employment (except those caused by willful misconduct) shall be compensated for by the employer according to certain definite rules,

which rules are to be administered by the administrative board aforesaid by means of simple procedure definitely laid down, which gives to both parties fair notice and hearing, and results in findings and an award which may be filed in the circuit court and become a judgment. It further provides that the findings of fact shall be conclusive and the award subject to review only by action in the circuit court of Dane county, in which it can be set aside only (1) if the commission acted without or in excess of its powers; (2) if the award was procured by fraud; or (3) if the award is not supported by the findings of fact. It then provides that the judgment thus rendered shall be subject to appeal to the Supreme court.

"For all the essential purposes of this discussion, it may truly be said that this is the law which is before us, and the question is simply whether there is any vital part of it which the Legislature may not enact because the Constitution forbids it. It is matter of common knowledge that this law forms the legislative response to an emphatic, if not a peremptory, public demand. It was admitted by lawyers, as well as laymen, that the personal injury action brought by the employé against his employer to recover damages for injuries sustained by reason of the negligence of the employer had wholly failed to meet or remedy a great economic and social problem which modern industrialism has forced upon us, namely, the problem of who shall make pecuniary recompense for the toll of suffering and death which that industrialism levies and must continue to levy upon the civilized world. This problem is distinctly a modern problem. In the days of manual labor, the small shop, with few employés, and the stagecoach, there was no such problem, or, if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few, and the employé who exercised any reasonable degree of care was com-

paratively secure from injury. There was no army of injured and dying, with constantly swelling ranks marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come. Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our manufacturing greatness will still have to be paid in human blood and tears. To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

"In approaching the consideration of the present law, we must bear in mind the well-established principle that it must be sustained, unless it be clear beyond reasonable question that it violates some constitutional limitation or prohibition. That governments founded on written constitutions which are made difficult of amendment or change lose much in flexibility and adaptability to changed conditions there can be no doubt. Indeed that may be said to be one purpose of the written constitution. Doubtless they gain enough in stability and freedom from mere whimsical and sudden changes to more than make up for the loss in flexibility; but the loss still remains, whether for good or ill. A constitution is a very human document, and must embody with greater or less fidelity the spirit of the time of its adoption. It will be framed to meet the problems and difficulties which face the men who make it, and it will generally crystallize with more or less fidelity the political,

social and economic propositions which are considered irrefutable, if not actually inspired, by the philosophers and legislators of the time; but the difficulty is that, while the Constitution is fixed or very hard to change, the conditions and problems surrounding the people, as well as their ideals, are constantly changing. The politics or philosophical aphorism of one generation is doubted by the next, and entirely discarded by the third. The race moves forward constantly, and no Canute can stay its progress.

"Constitutional commands and prohibitions, either distinctly laid down in express words or necessarily implied from general words, must be obeyed, and implicitly obeyed, so long as they remain unamended or unrepealed. Any other course on the part of either legislator or judge constitutes violation of his oath of office; but when there is no such express command or prohibition, but only general language, or a general policy drawn from the four corners of the instrument, what shall be said about this? By what standards is this general language or general policy to be interpreted and applied to present day people and conditions? When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind in the light of eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.

"(1) Where there is no express command or prohibition, but only general language or policy to be considered, the conditions prevailing at the time of its adoption must have their due weight; but the changed social, economic, and government conditions and ideals of the time, as well as the problems which the changes have produced, must also logically enter into the consideration, and become influential factors in the settle-

ment of problems of construction and interpretation. These general propositions are here laid down, not because they are considered either new or in serious controversy, but because they are believed to be peculiarly applicable to a case like the present, where a law which is framed to meet new economic conditions and difficulties resulting therefrom is attacked principally because it is believed to offend against constitutional guaranties or prohibitions couched in general terms, or supposed general policies drawn from the whole body of the instrument.

"Passing to the consideration of the contentions made in the present case, we note in limine that this is not a compulsory law. No employer is compelled to pay damages to an employé without having had his day in court. It is true that the argument is made that the law is practically coercive; but that argument is not regarded by us as sound, and will be taken up and treated later in this opinion. We are therefore relieved from all consideration of the question whether a compulsory compensation act offends against those clauses of the state and federal constitutions which guarantee all citizens against the deprivation of property without due process of law. This would be a question of greater difficulty than those which are presented in the present case. It was decided in the affirmative by the Court of Appeals of New York (Ives v. S. B. Ry. Co. 201 N. Y. 271, 94 N. E. 431), and in the negative by the Supreme Court of Washington (State ex rel. Clausen [Sept. 27, 1911] 117 Pac. 1101), and we express no opinion upon it.

"The contention which naturally seems to come first in order is the objection that the whole first section, abolishing the defenses of assumption of risk and negligence of a fellow servant, is void, because, as it is said, public policy does not require their abrogation in any but the hazardous trades; it being admitted that in these

last-named trades these defenses may properly be abolished.

"(2) The term "public policy" is frequently used very vaguely, and evidently is so used here. It is, however, quite a definite thing. Public policy on a given subject is determined either by the constitution itself or by statutes passed within constitutional limitations. In the absence of such constitutional or statutory determination only may the decisions of the courts determine it. Hartford Ins. Co. v. C., M. & St. P. Ry. Co., 70 Fed. 201, 17 C. C. A. 62, 30 L. R. A. 193; s. c., 175 U. S. 91, 20 Sup. Ct. 33, 44 L. Ed. 84. This court has said: "We know of no ground upon which a constitutional legislative enactment can be rightly spoken of as contrary to public policy." Julien v. Model B. L. & I. Assn., 116 Wis. 79, 92 N. W. 561, 61 L. R. A. 668. And the remark is certainly correct. When acting within constitutional limitations, the Legislature settles and declares the public policy of a state, and not the court. True, where the Legislature has not spoken on a subject, and the courts in the course of their duty have declared the principle of common law applicable thereto, public policy may be truly said to be thus created; but any public policy thus created by the courts may be at any time reversed or changed by the Legislature, provided it act within constitutional lines. The people, acting directly by means of a referendum, or through their representatives in constitutional conventions or legislative bodies, are the makers of public policy, and it is only when the people have failed to speak in these methods that the courts can be said to have power to make public policy by decision. A constitutional statute can not be contrary to public policy—it is public policy.

"The contention that a statute is unconstitutional because it is against public policy amounts to nothing more than a contention that it is unconstitutional; hence

we address ourselves directly to that question and thereby gain something in clearness of thought.

"(3) The two defenses which the Legislature has thus attempted to take away are not intrenched behind any express constitutional provision, nor were they originally created by legislative action. They were both evolved by the courts. At a time when industries of all kinds were comparatively simple and free from danger, when employés of a common master were few in number and generally acquainted with each other, and when a personal injury action was a rarity, it was thought not to be unreasonable that an employé should assume those simple risks which were plainly before him, and should not be heard to complain if he were injured by the careless act of a fellow workman by whose side he had continued to work when he must have well known the nature and habits of the man. The precedent once made was generally followed, until it became buttressed by a multitude of decisions in practically all of the jurisdictions whose jurisprudence is founded upon the English common law. But, as has been pointed out earlier in this opinion, the conditions surrounding employer and employed have vastly changed during the last half century, and now the Legislature, having become convinced that new conditions call for a change in rules of liability, have declared that such a change shall be made. They have changed the rule established by the courts, because they deem another rule better fitted to deal with the problems of the time, or, in other words, because they deem it best to establish a changed public policy.

"It is frankly admitted by appellant that it is within the legislative power to make this change with regard to the hazardous trades, but not with regard to what are called the nonhazardous trades. But why not? There are, of course, some occupations which are exceptionally hazardous, and it may well be that it would be

within legislative discretion to classify these very hazardous occupations and remove the defenses as to them, while retaining them as to others less hazardous. Indeed, that very thing has been done and has been approved by the courts in this and many other states, especially in the case of railroads and to some extent with other industries. M. I. Co. v. Kline, 199 U. S. 593, 26 Sup. Ct. 159, 50 L. Ed. 322; Stats. Wis. § 1816, as amended by chapter 254, Laws 1907; Kiley v. C. M. & St. P. Ry. Co., 142 Wis. 154, 125 N. W. 464; Stats. Wis. §§1636j—1636jj (chapter 303, Laws 1905).

[4] But because there is room for classification it does not follow that legislation without classification is unconstitutional. There are hazards in all occupations; indeed, they follow every man from the cradle to the grave. What constitutional requirement, either express or implied, clothes these court-made defenses with exceptional sanctity as to the less hazardous industries, and warns off from them the sacrilegious hand of the Legislature? We are referred to none, and we know of none. It is admitted in the Ives Case, supra, that both the fellow servant defense and the contributory negligence defense, being of judicial origin, may be changed or abolished by the Legislature. See, also, Opinions of the Justices of the Massachusetts Supreme Judicial Court on the Personal Injuries Act of 1911, 96 N. E. 308. We see absolutely no ground for the contention that these defenses may be lawfully abrogated as to the more hazardous industries, but must be forever held sacred as to the less hazardous industries. There may be a less persuasive reason for the change in the case of the latter class of industries, but this does not deprive the Legislature of the power to make it.

"[5, 6] But it is said that there is no proper classification here, and hence that the law is fatally discriminating in its character. The two defenses are preserved intact to employers who elect to come under the law

and taken away from those who do not so elect. The rules governing classification are familiar and are in brief as follows: It must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only and must apply equally to each member of the class. It seems to us that this classification fully meets these requirements; certainly there will be very real differences between the situation of the employer who elects to come under the law and the employer who does not. If the consenting employer only employs workmen who also elect to come under the law, he can never be mulcted in heavy damages, and will know whenever an employé is injured practically just what must be paid for the injury. Surely this is a different situation from the situation of the man who is liable to be brought into court by an injured employé at any time and obliged to defend common-law actions upon heavy claims unliquidated in their character, the outcome of which actions none can foretell. On the other hand, if, as seems quite likely, the greater part of the consenting employer's workmen consent, but some do not, and these latter are still retained in the employment, the same considerations will apply with somewhat less force. On the one hand, there is a class of consenting employers employing wholly or largely consenting workmen, and having definite and fixed obligations to their workmen in case of injury; on the other hand is a class of nonconsenting employers who have no such fixed obligations in case of injury to their workmen, but choose to meet every such workman in court and fight out the question of liability. There seems a very robust difference between these two classes. But after all there is another distinction which seems perhaps more satisfactory. The consenting employer has done his share, and it must be considered a considerable share, in rendering successful the legislative attempt to

meet and solve a difficult social and economic problem. Even if it be true (which, as before stated, is not decided) that he may not be compelled under our Constitutions, state and national, to assist in the solution of this problem, still does not his voluntary act in giving that assistance constitute a substantial distinction, making a real difference of situation between him and the employer who refuses his aid—a difference which justifies a difference in treatment?

"It seems to us that this question must be answered in the affirmative, and if it be so answered there can be no doubt as to the legitimacy of the classification, for the reason that it is quite apparent that the other conditions of valid classification are fully satisfied. There can be no doubt that the classification is germane to the purpose of the law, and it is not limited in its application to existing conditions only, and applies equally to each member of the class.

"The minor classification by which the fellow servant defense is preserved to all employers employing less than four employés in a common employment is also attacked as having no proper legal basis; but it seems to us that the grounds of classification here are more persuasive even than in the case just discussed. The man who is employed with one or two other men in a given employment in all reasonable probability knows their characteristics well, and will probably be with them a great part of the time. He will have ample opportunity to form a just judgment as to the risk of injury from their negligence which he will run if he works with them, and will be enabled to shape his own conduct accordingly; but the man who is one of a large number of men, many of whom he never sees, and some of these latter having duties to perform in distant places upon the due performance of which his own safety depends, has no opportunity to acquire any accurate knowledge of the characteristics of many of his fellow workmen,

and can not intelligently decide what risk he runs at the hands of such distant and unknown employés. The difference in situation is not merely fanciful; it is real. In one case, the employé knows or has the means of knowing what to expect from his colaborers; in the other case, he has neither the knowledge nor the means of knowledge. Of course, there will be cases on the border line, where the difference in situation will be very slight, or perhaps entirely nonexistent. There will probably be no practical difference between the situation of the man who is one of four or five employés in a given employment and the situation of the man who is one of three; but this does not militate against the legitimacy of the classification. This is a necessary defect in all cases of classification based upon numbers. The question is not whether there may be some on one side of the line whose situation is practically the same as that of some on the other side, but whether there "is a distinction between the classes as classes, whether there are characteristics which, to a greater degree, persist through the one class than in the other which justify legal discrimination between them." State v. Evans, 130 Wis. 381, 110 N. W. 241.

"[7] Passing from these questions of classification, we meet the objection that the law, while in its words presenting to employer and employé a free choice as to whether he will accept its terms or not, is in fact coercive, so that neither employer nor employé can be said to act voluntarily in accepting it. As to the employer, the argument is that the abolition of the two defenses is a club which forces him to accept; and as to the employé, the argument is that if his employer accepts the law the employé will feel compelled to accept also, through fear of discharge if he do not accept.

"Both of these arguments are based upon conjecture. Laws can not be set aside upon mere speculation or conjecture. The court must be able to say with certainty

that an unlawful result will follow. We do not see how any such thing can be said here. No one can say with certainty what results will follow in the practical workings of the law. It may well be that many manufacturers, especially those employing small numbers of employés and in the less dangerous trades, will deliberately conclude that it will be better business policy to exercise greater care in guarding their employés from possible danger and greater discrimination in the employment of careful men, and reject the law entirely, running the risk of being able to prevent all or nearly all accidents. It seems extremely probable that the great bulk of workmen, especially of the unskilled classes, will be glad to come under the act and thus secure a certain compensation in case of injury, in place of that very uncertain and expensive thing, namely, the final result of a lawsuit; but whether this be so or not, it may be considered as reasonably certain that very many will elect to come under the act voluntarily and freely, and that those who do not will probably come from the ranks of skilled labor, who will deem the rates of compensation under the law as entirely inadequate or will be careful workmen in the less dangerous trades, who will see no gain in bartering their common-law rights for the restricted remedies furnished by the statute. It can not be said with any certainty that such men will be discharged for their failure to voluntarily come under the law. The probability would seem rather to be that they would be of a class which the employer would wish to keep in his employ, notwithstanding their attitude toward the law. These matters are, however, purely speculative and conjectural. None can say what the practical operation of the law will be. It is enough for our present purpose that no one can say with certainty that it will operate to coerce either employer or employé.

"[8] We thus reach the conclusion that there are

no valid constitutional objections to the first section of the law in question, and this conclusion obviates the necessity of any consideration of the provisions of section 2394—32, which aims to preserve the balance of the law intact in case the whole or some part of section 1 should be considered invalid. We may say in passing that we know of no good reason why the Legislature may not declare its intention that one part or section of a law is not a compensation for and that it may be separated from the balance of the act for the very purpose of saving such balance from being invalidated in case the first-named part or section be held unconstitutional. We think it would take a very extreme case of palpable absurdity or falsity in such a provision to justify any court in declaring such a declaration of legislative intent ineffective, if indeed a court could make such a declaration at all.

"[9] The next important contention is that the law is unconstitutional because it vests judicial power in a body which is not a court and is not composed of men elected by the people, in violation of those clauses of the state Constitution which vest the judicial power in certain courts and provide for the election of judges by the people, as well as in violation of the constitutional guaranties of due process of law. It was suggested at the argument that the Industrial Commission might perhaps be held to be a court of conciliation, as authorized to be created by section 16 of article 7 of the state Constitution; but we do not find it necessary to consider or decide this contention. We do not consider the Industrial Commission a court, nor do we construe the act as vesting in the commission judicial powers within the meaning of the Constitution. It is an administrative body or arm of the government, which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, and in so doing acts quasi judicially;

but it is not thereby vested with judicial power in the constitutional sense.

"There are many such administrative bodies or commissions, and with the increasing complexity of modern government they seem likely to increase rather than diminish. Examples may be easily thought of. Town boards, boards of health, boards of review, boards of equalization, railroad rate commissions, and public utility commissions all come within this class. They perform very important duties in our scheme of government, but they are not Legislatures or courts. The legislative branch of the government by statute determines the rights, duties, and liabilities of persons and corporations under certain conditions of fact, and varying as the facts and conditions change. Manifestly the Legislature can not remain in session and pass a new act upon every change of conditions; but it may and does commit to an administrative board the duty of ascertaining when the facts exist which call into activity certain provisions of the law, and when conditions have changed so as to call into activity other provisions. The law is made by the Legislature; the facts upon which its operation is dependent are ascertained by the administrative board. While acting within the scope of its duty, or its jurisdiction, as it is sometimes called, such a board may lawfully be endowed with very broad powers, and its conclusions may be given great dignity and force, so that courts may not reverse them unless the proof be clear and satisfactory that they are wrong. M., St. P. & S. S. M. R. Co. v. R. R. Com.,136 Wis. 146, 116 N. W. 905, 17 L. R. A. (N. S.) 821. Not only this, but many such boards are created whose decisions of fact honestly made within their jurisdiction are not subject to review in any proceeding. State ex rel. v. Chittenden, 112 Wis. 569, 88 N. W. 587; State ex rel. v. Wharton, 117 Wis. 558, 94 N. W. 359; State ex rel. Cook v. Houser, 122 Wis.

534-561, 100 N. W. 964; State ex rel. v. Trustees, 138 Wis. 133, 119 N. W. 806, 20 L. R. A. (N. S.) 1175. It is important to notice the limitation contained in the last sentence. The decision of such a board may be made conclusive when the board is acting within its jurisdiction, not otherwise. Hence the question of its jurisdiction is one always open to the courts for review. It can not itself conclusively settle that question, and thus endow itself with power. If no appeal from its conclusions be provided, the question whether it has acted within or exceeded its jurisdiction is always open to the examination and decision of the proper court by writ of certiorari. The instances where the question of jurisdiction of such bodies has been examined and decided in certiorari actions are so numerous that it seems unnecessary to cite them. In such cases it is considered that clear violations of law in reaching the result reached by the board, such as acting without evidence when evidence is required, or making a decision contrary to all the evidence, constitute jurisdictional error, and will justify reversal of the board's action, as well as the failure to take the proper steps to acquire jurisdiction at the beginning of the proceeding. State ex rel. Augusta v. Losby, 115 Wis. 57, 90 N. W. 188.

"Thus, in the case before us, the jurisdiction of the Industrial Commission to entertain any claim for compensation under the act rests upon two facts which must exist, viz.: (1) That both employer and employé have elected to come under the act; and (2) that the injury was received in service growing out of or incidental to the employment as the result of accident, and not of wilful misconduct.

"[10] The Industrial Commission must, of course, decide these questions in any case where they are raised; but it cannot decide them conclusively, for they are jurisdictional questions on which its right to act at all depends. They must be open to review in some court of

competent jurisdiction; otherwise, the parties would be denied due process of law. The tribunal only has authority over those who have voluntarily elected to give it authority, and if it can decide finally that a man has given consent, when he has not, it assumes the functions of a court. If the act before us took away from the courts the power to consider these jurisdictional questions, either expressly or by necessary implication, the contention that judicial power had been vested in the commission, contrary to the command of the Constitution, would be of greater force; but we think that the act does not do this, or attempt to do it. True, it says that the findings of fact made by the commission shall, in the absence of fraud be conclusive; but it provides for an action in the circuit court of Dane county, in which the board's award may be set aside upon either of three grounds, viz.: (1) That the board acted without or in excess of its powers; (2) that the award was procured by fraud; and (3) that the findings of fact do not support the award.

"[11] We regard the expression "without or in excess of its powers" as substantially the equivalent, or at least as inclusive of the expression "without or in excess of its jurisdiction," as those words are used in certiorari actions to review the decisions of administrative officers and bodies. We know of no other construction that can be logically given to them, and it seems to us that they were designedly and advisedly inserted by the framers of the bill to meet the very objection which is now made. With this construction, it is certain that the constitutional powers of the courts have not been invaded, and that no man without his consent can be brought under the law or is deprived of his right to "due process of law" thereby.

"There are some further objections which will be more briefly considered. It is said that, even if it be held that the act is not coercive, still when employer and em-

ployé consent to come under the law they in effect wholly stipulate away their rights to resort to the courts, and that such agreements are void, citing Fox v. M. F. A. Assn., 96 Wis. 390, 71 N. W. 363. The case cited, however, recognizes the companion principle that agreements to arbitrate special matters, such, for instance, as the amount of the loss under an insurance policy (or, as in the present case, the extent of an injury or disability, and the like), which do not go to the whole groundwork of the controversy, are universally sustained. As we have seen, these special matters are the only matters which the board may conclusively decide under this law. If there be a controversy as to fundamental rights, namely, whether the parties have consented, or as to whether the injuries resulted from wilful misconduct, these issues are still open to the court upon the appeal.

"In considering the question as to how far consent may go in matters of this kind, a case not cited in the briefs or mentioned in the oral argument should, we think, be referred to here, viz., the case of Van Slyke v. Insurance Co., 39 Wis. 390, 20 Am. Rep. 50. In this case it appeared that the Legislature had passed a law providing that in case of the filing of an affidavit of prejudice against a circuit judge the parties might, if they chose, stipulate that a member of the bar should act as judge and try the case, with all the powers of the regularly elected judge of the court. Acting on this law, the parties in the case agreed that Mr. John J. Cole should try the case, and he did so, rendered judgment for the plaintiff, and the defendant appealed. The court held (Chief Justice Ryan writing the opinion) that the Constitution having vested all the judicial power of the state in the courts, and provided for the election of judges for such courts, the Legislature could confer no judicial power on other officers or persons, nor authorize the parties to an action to do so; hence there was no trial before a court, and no judgment. The

question as to whether the defeated party might not be prevented from raising any objection by his voluntary waiver was not considered or mentioned; but in any event the case has no bearing here, and is only mentioned in order to show that it has not been overlooked. It only decides that neither the Legislature nor private parties can make a judge out of a private citizen, and endow him with the power to hold a court, contrary to the direct command of the Constitution. As the commission in the present case is not a court, but simply an administrative board, the doctrine laid down in the case cited has no application.

"[12] Again, it is said that the act compels municipalities to levy taxes for other than public purposes, since all workmen injured in the employ of the public are to be compensated, and thus taxpayers will be deprived of their property without due process of law. We have not been quite able to appreciate the force of this point, and we find no argument upon it in the brief. We shall only say that the manner in which the state or the public shall treat its workmen is peculiarly a matter for the Legislature to determine. No one is compelled to work for the public, and, if he does, he takes his situation on the terms which the public gives. We know of no reason why the public, acting by its lawmaking power, may not provide that its employés shall have as part of their compensation certain indemnities in case of accidental injury in the public service. When a law does so provide, the raising of the funds to discharge those indemnities becomes plainly a proper public purpose.

"[13] Objection is made to those clauses of section 2394—16 which provide for the giving of notice of claim by mail, and allow testimony to be taken without notice to either party, and the claim is made that this is not "due process of law." Were the commission a court, these objections would probably deserve serious consid-

eration, especially the latter one. But, as we have seen, the commission is an administrative board merely. It is common knowledge that such boards are frequently given power to investigate and determine facts without notice to the parties of each successive step in the proceedings. The proceedings before such boards are not expected to be as formal and cumbrous as the proceedings of courts; indeed, the greater flexibility which such bodies must possess if they are to discharge their duties seems to demand greater freedom of action. If notice, either actual or constructive, of the commencement of the proceedings before such a body be required to be given to the parties interested, and they be given full and free opportunity to be heard and present evidence, it is generally held sufficient, even though notice of intermediate steps in the proceeding be not required or given. Schintgen v. La Crosse, 117 Wis. 158, 94 N. W. 84. In case of a board like the present, which only acts on the rights of parties who have consented that it may so act, the reason of the rule is far stronger.

"[14] Some contention is made in the brief that minors can not be treated in the same manner as adults, and that the provisions of the law which declares that a minor who is legally entitled to work shall have the same power of contracting for service as an adult is objectionable, because it allows the employer to decide whether the law shall treat his minor employés as adults. The objection seems to us fanciful and elusive. There is no claim that the Legislature may not endow minors with the right to make contracts otherwise lawful, and, if this be so, it seems to us to be the end of the discussion. After the minor is so endowed, he becomes for the purposes of the act an adult, or at least on the same plane. No adult employé of a private employer can elect to come under the act unless his employer has first elected to do so. So the employer has the power to decide whether any of his employés, infant or adult,

shall have the privileges of the act if they continue to work for him. This is practically all there is of the matter, and we see no substantial distinction between the effect of the law upon the adult and its effect upon the minor.

"The foregoing considerations are believed to fully meet and dispose of all the objections made to the law which could reasonably be claimed to be fatal to the entire law if sustained. There are many objections made to single sections or clauses of the law, which we do not find it necessary or advisable to treat at this time. Even should some or all of them be sustained, it is our judgment that the sections or clauses so questioned could not be said to be so far compensations for or inducements to the balance of the law that the entire law must fall. In our judgment it is better to reserve these questions for consideration when an actual case arises which calls for the decision of the court upon them. It is well-nigh impossible for the human mind to call up and contemplate in advance all the considerations which ought to be considered in passing upon the validity of the various incidental clauses of a new and complicated law. The concrete case and its actual circumstances and effects are apt to throw much light upon the question and suggest considerations wholly unthought of when viewing the matter abstractly in advance of any actual experience.

"Among these contentions, which we now pass without decision, perhaps the most important is the contention that so much of section 2394—16 as provides that the board or any member thereof, or any examiner appointed thereby, shall have power to issue subpoenas, obedience to which shall be enforced by contempt proceedings in the circuit court. This seems to present a serious question, worthy of careful examination, and we intimate no opinion upon it now.

"Other minor contentions, which we do not consider

it necessary or advisable to pass upon now, are to the effect that the clauses are void which empower the commission (1) to declare and enforce penalties against the employer for failure to perform certain orders of the board made pending hearing (section 2394—17); (2) to set aside or modify contracts of settlement previously made by the parties (section 2394—15); and (3) to regulate the amount of contingent attorney's fees and permit one claimant to make a contract which it may refuse to allow another to make (section 2394—22).

"[15] Before closing, we shall briefly refer to another question which was not much discussed on the argument, namely, the question whether the law applies or was intended to apply to persons who, like the plaintiffs, are employed under contracts of service made prior to the passage of the law, and which do not expire until some definite date in the future, and, if so, whether the law can apply to them without impairing the obligations of their contracts, and thus violating the Constitution. As to the first branch of this question, we think that the language of the act leaves no doubt as to the intention of the Legislature. The entire act by express terms was to become effective September 1, 1911. Its provisions are broad, and without express exception, read according to their grammatical meaning, they include all employers and employés who occupy those relations at the time the law becomes effective. If there was an intention to exclude any from its terms, that intention has been carefully concealed. We conclude that it was intended to include all employers and employés, whatever the term of service. The question whether the act as so construed affects an existing contract of service expiring at some distant period in the future is easily answered in the negative, as it seems to us. Certainly the law does not affect the service to be rendered, or the wages to be paid in any way. Neither the obligation of the workman to faithfully do his work, nor

the obligation of the employer to faithfully pay the stipulated wage, nor the remedy in case of breach by either party, is in any way affected. What, then, is affected? Plainly no provision of the contract; but, if the employer elects to come under the law, the employé must choose whether he will come under it or not, and if he does not wish to come under it he may run the risk of being discharged, or if he wishes to retain his employment he may feel compelled to elect to come under the law, and thus lose his right to bring an action at law in case of a personal injury sustained in the employment.

"[16] But all this does not in any way affect the contract of employment. That remains absolutely unimpaired in all its terms. The right to bring an action in the future in case of a possible tort not yet committed is no part of the contract of employment. That right arises out of the relation of employer and employé, and is subject to change by the lawmaking power at any time. The employer does not contract that it shall remain intact. There is no vested right in a mere remedy for a hpothetical wrong. At most the law can not be said to do more than change the remedy for a tort which is yet to happen, and may never happen. The Legislature may change the remedies for torts yet to be committed at any time, and such changes can not be said to make any change in mere contracts of service existing between the parties. This seems very patent. The Legislature has at many times within the last two decades passed laws very materially changing the liabilities of employers to employés for injuries resulting from the negligent acts of the employer: e. g., the laws requiring the protection of machinery, abolishing assumption of risk in such cases, abolishing the coemployé rule as to railway companies, and changing the rules as to contributory negligence. In no case has the claim ever been made that these laws in any way affected or impaired existing contracts of service for

terms expiring in the future although many cases must doubtless have occurred where those laws were applied to parties who were under such contracts.

"We have now discussed all of the contentions made against the law which we deem entitled to detailed treatment, and we find no serious difficulty in sustaining its fundamental and essential provisions. As said in the beginning of this opinion, this law forms the answer of the Legislature to a very widespread demand. It is a legislative attempt to reach within constitutional lines some fair solution of a serious problem which other nations, not restricted by written constitutional inhibitions, have solved or partially solved years ago. Doubtless the law will need and will receive changes and amendments as time shall test its provisions and demonstrate its weak points. It would be unreasonable to expect that a law covering so important a subject along lines not before attempted should be perfect, or very near perfect, upon its first enactment. If experience shall demonstrate that it is practicable and workable, and operates either wholly or in great measure to put an end to that great mass of personal injury litigation between employer and employé, with its tremendous waste of money and its unsatisfactory results, which now burdens the courts, the long and painstaking labors of those legislators and citizens who collaborated in framing it will be fittingly rewarded by a result so greatly to be desired. That result will mean a distinct improvement in our social and economic conditions.

"The effect of our conclusions upon the result in the present case is yet to be considered. The complaint was sustained, and the injunction granted, on the ground apparently that, the law being valid, the plaintiffs would be greatly injured if their employer elected to become bound by it, because they would be obliged either to break their existing contracts or lose their common-law remedies for their employer's torts. Granting all that

plaintiffs claim as to the necessary results of their employer's election, it is very certain that no irreparable injury results to them. If their employer breaks his contract of employment because they decline to accept the new law, they have adequate legal remedies for the recovery of damages. If, on the other hand, they elect to come under the law themselves, they lose no vested or contract right, and are not damaged in the eyes of the law by the change in their remedies for future torts. In either event there is no cause of action in equity, and no ground for an injunction. The complaint should have been dismissed on the pleadings.

"Judgment reversed, and action remanded, with directions to dismiss the complaint.

"Mr. Justice Barnes in his concurring opinion said: I concur in the opinion of the Chief Justice, except in so far as it is said in effect that our Constitutions may mean one thing today and something different tomorrow, depending on whether conditions and ideals have in the meantime undergone a change. I regard our Constitutions as immutable, except when changed in the manner therein prescribed. Judges, in interpreting our fundamental laws, may at one time reach conclusions different from those which would be reached at another time. This does not argue that the constitutional provision under consideration has undergone any change, but demonstrates that judges, being finite beings, made a mistake at one time or the other. No act of the Legislature should be declared unconstitutional unless it is clearly so. This is elementary. By hewing closely to this line, there is little danger of the courts committing any serious blunders in interpreting our organic laws. If a legislative act, measured by this standard, trenches on the Constitution, it should be held void, regardless of whether or not the provision violated is out of harmony with twentieth century conditions and ideals. To hold otherwise is to say that the courts may change our

fundamental laws. This would be a clear usurpation of power, never vested nor intended to be vested in the courts, and one which was reserved to the people themselves. I am a firm believer in constitutional government. I do not share the belief that our Constitutions have become archaic, or that they have outlived their usefulness. If the opinion of the court is intended to mean that it is a doubtful question whether our Constitutions should be preserved or thrown in the "scrap heap," I do not agree with it.

Said Mr. Justice Marshall in concurrence: The result, itself, meets with my unqualified approval. Some language in the court's opinion, however, respecting the Constitution, I fear will be construed in a different way than the writer thereof, or any member of the court, intended or would sanction, tending to impair the lofty character of the fundamental law as significantly maintained by this court. I am not alone in that. Other language appears which does not express my personal views. True, none of such is matter of decision or even judicial dicta, but, if left unchallenged, it is liable to misleadingly indicate a trend of judicial thought here which, I am safe in saying, does not exist. I choose to avoid responsibility therefor. It, seemingly, is my duty to do so. In discharging that duty I wish not to take from the dignity of the court's able opinion on the vital questions presented for solution. I do not understand they involved any new constitutional, or any, question of difficulty, giving rise, under any circumstances, to desire a broader fundamental spirit than has been long firmly entrenched in the jurisprudence of this country.

"The law approved is a very mild piece of legislation. While I would not suggest it is too moderate for now—for that is not within my province—yet I would not indicate that the Legislature responded as fully as it might to the need for a system as directly as practicable, laying the personal injury burdens of production upon the

things produced where they belong, as should have been efficiently recognized long ago, and would have been had the lawmaking power appreciated that it is its province, not that of courts, to cure infirmity in the law. If criticisms, unjustly and freely directed toward the latter and the human instrumentalities thereof, merely because of their fidelity to duty to maintain the laws as given, had been turned upon the former for failure to better conserve human happiness in the industrial field in the light of twentieth century conditions, untold suffering might have been prevented, which only the people's representatives could prevent. Tardy recognition of such duty casts no reflection upon legislative actors of today. Who can say but that they would have had the same ideals as now, and effected the same results long ago if opportunity had been offered them to do so? It has been, in the past, far easier to criticise a power which was helpless to supply a remedy, than to suggest one or move legislative power to adopt one.

"I am constrained to write the foregoing to give deserved credit to the patient, earnest, efficient labor of the lawmakers who placed the enactment in question upon the statute book of this state. It would give them too little credit to record, merely, that they bowed to public demand, and too little credit to this court to leave room for the thought that it has been influenced by any such demand to give the Constitution any new shade of meaning to sustain the enactment, or that it would change, or arrogate to itself power or disposition to change, fundamentals in any sense, by judicial interpretation.

"As to the subject of the enactment, advanced thinkers in economics, law and legislation have been at the front and the public has been slow to follow. It took the industrious, able, patient, tactful legislative committee over two years of activity, to educate the people up to willingness to accept on trial the mild law before us.

Opposition had to be overcome by education on all sides. The Legislature responded, not so much to a general demand, as to a constitutional command, to conserve, in the light of the present, the public welfare.

"The remarks in the court's opinion which may suggest to some that a different meaning is to be read out of the Constitution now than formerly; that it may have meant one thing when framed and later another, and now be held differently, according to judicial interpretation to meet social necessities as recognized by human instrumentalities in the particular environment—probably was not so intended, but I sense danger of a contrary impression going out. Such ability to bend the fundamental law in the name of judicial interpretation—the idea that an eighteenth century construction for an eighteenth century condition may not, and at the hands of the court does not have to, fit a twentieth century condition—has been advanced by some, but not, significantly at least, by any court. On the contrary, it has met with universal condemnation. That it is wrong, every man of eminence that has ever written upon the subject in the past, as well as the very nature of the case and the very logic and limitations of judicial interpretation, bear witness. The fertile method of dealing with the Constitution has been characterized as one which has "furnished a mode of argument which would on the one hand leave the Constitution crippled and inanimate, or on the other give it an extent of elasticity subversive of all rational boundaries." Story, Constitution, 389.

"Manifestly, there can be but one right interpretation or construction of the Constitution. It is said to have been constructed of general declarations, so that, in letter and spirit, it might abide indefinitely and would have to so abide, dealing with all conditions and all ages, except as amended in the manner therein specified. Considerately with that, there can be but one viewpoint for interpretation, and that is the one from which the fram-

ers of the system builded. That is unmistakably indicated in Marbury v. Madison, 1 Cranch 137, 2 L. Ed. 60; Martin v. Hunter, 1 Wheat. 304, 4 L. Ed. 97.

"We speak of the Constitution in a general sense—the American system, commencing with the federal model and including the state Constitutions framed in harmony therewith. In all writings thereon, from Chief Justice Marshall to date, the idea that it can not be properly judicially changed to suit the notions of the times, and that there will appear little need therefor when the real nature thereof is comprehended, is made prominent. It was that idea, largely, which moved one eminent writer to speak of it as the "greatest single achievement of the eighteenth century," and another to characterize it as the "most wonderful work ever struck off at a given time by the brain and purpose of man." Truly, it can not be said of that which was so unequaled in the eighteenth century, and, we may well add, was unequaled in the nineteenth and has been since, that it can take the cast, so to speak, from time to time of its environment as judicial instrumentalities may view it through the vista of conditions in præsenti. All history says no. The very inconsistency of the contrary says no. The absence of any necessity for, and the destructive danger of, any such quality, say no.

"A new remedy for a new condition within the boundaries of reason is within legitimate police authority. Who could wish more? How could more exist and human liberty—natural, inherent rights—be safe? Would it not be well to recur to the classic rule for testing legitimacy of legislative enactments, given by the most eminent judicial expounder of the Constitution of which the history of American jurisprudence bears record:

" 'Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not

prohibited, but consist with the letter and spirit of the Constitution, are constitutional.' McCulloch v. Maryland, 4 Wheat. 316, 421, 4 L. Ed. 579.

"With that and the significance of the declared purpose and central thought of the Constitution in mind, much of the supposed difficulty which has stimulated suggestions of competency to, and necessity for, bending it by a usurpatious method of interpretion, will disappear.

"How are we to determine when the purpose of a law in the field of police power, and unaffected by any express prohibition, is legitimate? It seems the answer is easy. Look first to the purpose of the Constitution, found in the declaration, "Grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect union, insure domestic tranquility and promote the general welfare" we "do establish this Constitution." Then to the central thought—the very superstructure—upon which the whole was builded: "All men are born equally free and independent and have certain inherent rights, among those are life, liberty and the pursuit of happiness." There is voiced a broad spirit, covering as this court has, in effect, many times said, a field as limitless as are human needs. The language was not used for mere rhetorical ornamentation or effect, but to suggest the permissible scope of legislation in the zone of general welfare, its extent and its limitations. Durkee v. Janesville, 28 Wis. 464, 9 Am. Rep. 500; State, etc., v. Kreutzberg, 114 Wis. 530, 90 N. W. 1098, 58 L. R. A. 748, 91 Am. St. Rep. 934; State, etc., v. Redmon, 134 Wis. 89, 114 N. W. 137, 14 L. R. A. (N. S.) 229, 126 Am. St. Rep. 1003; Bonnett v. Vallier, 136 Wis. 193, 116 N. W. 885, 17 L. R. A. (N. S.) 486, 128 Am. St. Rep. 1061.

"So here, as it seems, the initial question was this: Is the purpose of the law legitimate, within the broad dominating spirit mentioned? The answer must be yes.

as the manifest purpose is to promote every element of the central thought of the Constitution. Anything fairly within that has always been and must, necessarily always, be held legitimate. Keeping in mind that in the selection of means the Legislature has a very broad comprehensive field in which to freely make a choice, the next question is, are the means contemplated reasonably appropriate to the end to be attained? Not are they the best means, but are they proper means, in that they are not within any express prohibition and tend to conserve rather than to destroy? All must agree in the affirmative on that in harmony with the best thought of all the more civilized nations of Europe. The difficulty here has been, want of appreciation of the great economic truth, that personal injury losses incident to industrial pursuits, as certainly as wages, are a part of the cost of production of those things essential to or proper for human consumption, and the more direct they are incorporated therein, the less the enhancement of cost and the better for all.

"True, the old remedies for losses mentioned have been inefficient and wasteful. They are, economically speaking, unscientific and have always been. It is more apparent now than formerly by reason of greater and more numerous modern activities and methods, that is all. In truth, the infirmity from an economic standpoint, and from the standpoint of man's duty to his fellow men, has always existed, though the quantum of regrettable results and useless waste has greatly increased by the multiplication of human activities and physical instrumentalities.

"So it will be seen, I think, that while particular means may be reasonably appropriate to a legitimate purpose under some conditions characterizing a particular period, and not have been at a prior time, no change in the Constitution is involved in remedying the misfit. The end being proper the legitimacy of means may be

dependable upon conditions, the question turning more on matter of fact than anything else. The change of mere means does not require a fundamental change, so long as legitimacy of end and reasonable appropriateness of means shall be kept efficiently in view.

"Want of appreciation, in my judgment, of the Constitution from the viewpoint suggested, has led some to advocate judicial changes to meet new conditions, while others have insisted that many amendments, made in the prescribed way, practically substituting a new system for that of the fathers, are necessary or advisable, and still others have maintained the broad liberal view suggested, which was early entrenched in the jurisprudence of this county by the judicial writings of Chief Justice John Marshall. That idea renders changes of any kind unnecessary to legislative competency to legislate to any extent which reasonably promotes a constitutional object. Anything further would destroy, or tend to destroy, instead of promote public welfare. Such idea is the safe one and the right one from the viewpoint, I think, of the fathers. It is the one sturdily maintained by this court. It is the one I feel competent to say, all members of this court would now maintain and that nothing in its opinion should be otherwise taken.

"If the Constitution is to efficiently endure, the idea that it is capable of being resquared, from time to time, to fit new legislative or judicial notions of necessities in præsenti, instead of new legislation being tested by it, must be combated whenever and wherever advanced, and wrong impressions in regard to the matter carefully guarded against. To even, significantly, speak of making the Constitution adaptable to new conditions by means of interpretation, when the selection of new and constitutional means, adaptable to such conditions, is meant, is liable to confuse and weaken that high regard all should have for the fundamental law as a broad,

definite, certain, comprehensive, unvarying and unvariable system, other than by the means therein pointed out. Dark will be the day, if that day will ever come, for the people of this country, and dark to the people of all countries whose attention is directed here for lessons in constitutional government, when our system shall not be held up by the courts as speaking the same at one time as at another, except in so far as changes shall be made in the particular way. That is the doctrine of Marbury v. Madison, 1 Cranch 137, 2 L. Ed. 60. No one can read that great exposition of our system without appreciating how illogical it is to speak of interpretation as an instrumentality for giving, from time to time, a different cast to the fundamental law. The whole spirit of the court's logic condemns such reasoning as heresy. Note the significance of this: "The exercise of this original right" to make a system of government "is a very great exertion, nor can it, nor ought it to be frequently repeated. The principles therefore, so established, are deemed fundamental, and as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent." In that connection the court added, in unanswerable logic, that the Constitution is not only the paramount law, but is absolutely unchangeable by ordinary means; that laws adaptable to it are legitimate, and laws so-called, not so adaptable, are not laws at all. It was designed to govern the Legislature and the courts as well. That conception is of something high above either Legislatures or courts, to vary it. How can that be done by indirection, miscalled interpretation and construction—a method of rounding a syllogism with a conclusion based on false premises. Interpretation of that sort would enable courts to evade and render useless the most carefully drawn enactments whether of fundamental or subsidiary law.

"So, in short, I think the law in question is a reason-

ably appropriate means to effect a constitutional purpose; that the Constitution needs no bending whatever in order to sustain it in its essential features, and none would be proper if the contrary were the case.

"The foregoing I can but regard out of harmony with this, in its letter: "Changed social, economic and governmental conditions and ideals of the time, as well as the problems the changes have produced, must largely enter into the consideration and become influential factors in the settlement of problems of construction and interpretation"—so far as it is pregnant with the thought that the fundamental law is judicially changeable. The words "problems" of "construction" and "interpretation" I think were unfortunately used, if the thought was merely of problems of whether new enactments to cope with new conditions are within or without the legitimate field of legislative activity, having regard to appropriateness of means to effect a constitutional end. The latter might be, as I have suggested, at one time and not a half century theretofore, because changed conditions may render an end legitimate, within the unchangeable scope of the fundamental law, which earlier was not, or the selected means to effect that end might be reasonably appropriate at one time, though not so a century, more or less, theretofore.

"Why treat judicial interpretations of law as a process of following changing ideals, social problems and ideas, since its sole office is to solve uncertainties as to the intent at the time of the enactment? Interpretation commences where begins uncertainty—obscurity as to the meaning the lawgivers purposed putting into the enactment and succeeded, discoverably, in expressing, literally or inferentially. In short, the gist of the matter is the intent when the law was made, not what one can make the language say in a different environment from that of its origin to accomplish a desired purpose. No bending is permissible for the latter purpose, but for the

former the very letter may have to give way to the spirit. State, etc., v. Ryan, 99 Wis. 123, 74 N. W. 544; State, etc., v. R. R. Comm., 137 Wis. 80, 117 N. W. 846; State, etc., v. Phelps, 144 Wis. 1, 128 N. W. 1041. The expounder is to "look to the whole and every part of the law, to the intent apparent from the whole, to the subject-matter, to the effects and consequences, to the reason and spirit, and thereby ascertain the ruling idea present" in the lawgiving body's mind at the time of the enactment, and then, so far as such idea can reasonably be spelled out of the enactment, give effect to it though it violates the letter. Wisconsin Industrial School for Girls v. Clark County, 103 Wis. 651, 659, 79 N. W. 422.

"True, 'the Constitution is a very human document' in the sense that it is a collection of words recognizing, characterizing and guaranteeing the natural rights of man—all that are essential to public welfare in the social state, but not so in the sense of creating such rights. The right to life, to liberty, to happiness, to equality one with another, are not of human creation. They are of divine origin, though by human instrumentality some one or more of them might be taken away. It is to prevent that, in the main, the Constitution was framed. So anything not expressly prohibited which reasonably conserves those God-given rights, is within its saving grace. Anything which clearly or materially impairs or destroys any one of them is condemned by it. It were better to inculcate the idea that it is not subject to change with the change of times and conditions, though such new conditions, by logical process may well be the deciding factor as to whether legislative means, resorted to for a particular end, are within or without the unchangeable constitutional principles. Manifestly it must have been the latter conception of the Constitution which so inspired statesmen of the first century of the republic with veneration for it. That might well have inspired Webster to love it, "to have a profound passion

for it," to "cherish it day and night," to "live on its healthful saving influence," and to "trust never, never to cease to heed it until" he should "go to the grave of his fathers," to "earnestly desire not to outlive it." It is good to draw inspiration from those lofty sentiments. I would not by word or deed, to any extent give rise to the thought that the ancient dignity of our system, in judicial conception here, has changed.

"At no period has appreciation of the great work of the fathers been more important than now. We need to sit anew, in thought, at their feet—revive knowledge that the result was wrought by a body or men—representatives of the great seats of learning of the English speaking race of two hemispheres, and otherwise men of broad experience, many of whom had been students of all federal governments of all prior ages in preparation for the special task—as the historian declared, "the goodliest fellowship of lawgivers whereof this world has record"—a body dominated by specialists inspired "by ennobling love for their fellow men" and the thought that they wrought, not for their age alone, but for the ages to come, and, so, sought to avoid the infirmities of previous systems of government by the people, by carefully providing that no change in letter or spirit should occur except in a particular and most deliberate and conservative way.

"Appreciating that the report of this case will be widely read and commented upon within and without the field of judicial administration, I particularly desire to avoid creation of, or administering to, false impressions respecting the dignity of the abolished defenses and the responsibility of courts for their existence.

"True, such defenses are of judicial origin, but not as that term, without explanation, might be understood by laymen. They are so in the same sense that a large part of the law, upon which rights and remedies depend, is of such creation. Nevertheless, all such is as much

the law of this state, to be respected by the courts, as any part of the Constitution or any act of the Legislature. It did not originate with the courts of our age or century. It has not been within the competency of this court at any time to change it. The defenses in question became a part of the law of the mother country through its judicial administration long before the Revolution. The law of such country, so far as adaptable to our conditions here, was adopted when our independent government was formed, and became the common law of this country. It was in full force in the territory of Wisconsin when our state was admitted into the Union. All officers were sworn to maintain it—that part relating to the law of negligence as well as the rest—and were bound to do so with as much fidelity as if incorporated into the written law. When the Constitution was adopted the unwritten law was substantially given the cast of written law and as such firmly entrenched as fundamental, subject to legislative change, by section 13, art. 14, of the Constitution in these words: "Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this Constitution, shall be and continue part of the law of this state until altered or suspended by the Legislature."

"Every judge of every court has been sworn to maintain the common law as thus intrenched in our system till changed by the Legislature. So from the viewpoint of the present, the law of negligence—including the defenses in question—does not lose in dignity when compared with an act of the Legislature, because ages ago it had judicial origin. It was, as we have seen, with deliberation adopted by the people when they organized our state government. No court in our time has had competency, we repeat, to change or create or destroy in that field. Power in that regard was expressly reserved to the Legislature. It has been free to act in the matter, within such reasonable limits as not to violate

guaranteed rights, for over 60 years, while the courts have been powerless to do more than to determine, to the best of their ability, the law as fundamentally adopted, or subsequently changed, by the lawmaking power, and apply it.

"Under the power reserved to the Legislature as aforesaid, it was competent for it to abolish the defenses in question, and to do it in such a way as to create inducement for employers to, voluntarily, become parties to the new system designed to better conserve human life and human happiness. Call the method "constitutional coercion," if thought best. That casts no discredit upon the method, for where coercion is necessary coercion is legitimate, no guaranteed rights being infringed upon.

"It is needless to add that I heartily endorse all said in the court's opinion regarding the importance of the legislation which has received approval. May it be the beginning of a well rounded out constitutional system making every one who consumes any product of labor for hire pay his proportionate amount of the cost of the creation representing the personal injury misfortunes of those whose hands have enabled him to secure the objects of human desire, thus minimizing the sufferings which are the natural incidents of industry and should be borne, so far as they represent pecuniary sacrifice, by the mass of mankind whose desires are administered to by such industry."

§ 229. Decisions of commission—Construction of word "employment."—The commission was called upon to construe the word "employment" in the case of Wiken v. Superior Stevedores Company.[4] The evidence showed that on Nov. 12, 1911, the applicant was employed by respondent as a dock laborer at a wage of 30 cents per hour. While engaged in unloading merchandise from

[4] 1 Bulletin Wis. Indus. Com. No. 3, p. 88.

a vessel, applicant met with an accident which resulted in the loss of the first two fingers of his right hand. Applicant claimed compensation for a permanent partial disability. Employer denied that there was any permanent disability. The evidence showed that there would be no permanent disability or loss of wage after the injuries had healed and that applicant was disabled for a period of 18 weeks.

AWARD: That the respondent pay for such medical and surgical treatment reasonably required at the time of the accident and thereafter for a period of 90 days and also pay the sum of $7.50 per week for a period of 18 weeks, $135.00 in all.

OPINION: At the time of the injury applicant was engaged in moving freight with a hand truck. It is contended that such was his employment within the meaning of the term "employment" as used in section 2394-11-1 (d) of chapter 50 of the laws of 1911. We consider that such construction of the term "employment" is too narrow. The applicant may more properly be said to have been engaged in the employment of dock man or dock laborer. In other words, the applicant was engaged in common labor in and about dock work.

§ 230. Decisions of commission—Powers of commission—Review of awards—Construction of word "employment."—The commission was called upon to define its powers to review awards in the case of Winter v. Mellen Lumber Company.[5]

On September 21, 1911, applicant was in the employ of the respondent as a shingle weaver. On this date he met with an accident which resulted in the loss of his thumb and first finger on his left hand. At the time of the accident the applicant was earning $21 per week. Section 2394-10 of the compensation act pro-

[5] 1 Bulletin Wis. Indus. Com. No. 3, p. 89.

vides that the average annual earnings of an employé shall not be taken at more than $750. The average weekly wage is 1-52 of the average annual wage; 1-52 of $750 is $14.42. The evidence shows that after the accident the applicant will be able to earn only $9 per week. His earnings at the time of the accident were $14.42 per week. His weekly loss of wage is $5.42.

AWARD: That respondent pay the applicant compensation at the rate of 65 per cent. of $5.42 per week for a period of fifteen years. This amounts to $3.52 per week for fifteen years. The award also directs the respondent company to pay for such medical and surgical treatment, supplies and apparatus as were reasonably necessary at the time of the accident and thereafter for a period of ninety days to relieve and cure the applicant from the effects of the injury.

On motion to set aside the award the following memorandum was filed by the commission:

MEMORANDUM: The applicant was injured on Sept. 21, 1911, while employed as a shingle sawyer in respondent's mill in Ashland county, Wisconsin. While attempting to remove a spault—a small piece of shingle block—from the machine, his left hand was thrown against the saw, and he lost his thumb and forefinger.

The matter was referred to Hon. A. W. Sanborn, of Ashland, Wis., who was appointed examiner to take the evidence and report. Mr. Sanborn held a formal hearing, at which witnesses were sworn and testified, and a sworn statement of the applicant in writing was admitted in evidence on stipulation. After the taking of the testimony counsel for each party submitted to the examiner written argument in support of findings in behalf of his client. The examiner made findings of fact, and reported the evidence and findings to the commission and the committee thereupon on its own motion, assuming that the hearing was closed, reviewed the evidence and findings of the examiner reported, read

the written arguments of counsel, and entered its findings and made its award, which findings substantially followed the findings of the examiner.

The respondent makes application to have the award set aside, and for leave to make oral argument before the commission. The commission was under the impression that the parties finally submitted their case by their written arguments, or it would have been pleased to listen to oral argument before making its findings. Before the findings and award were actually made, a request on the part of the respondent for such hearing was made in a letter to the commission, but by some mistake the letter was not brought to the attention of the commission before the findings and award were entered, and copies thereof sent to the parties.

The consideration of this application involves two questions:

1. The power of the commission to set aside its award. This question will sooner or later have to be determined by the courts. The commission is not expressly given such power; whether it has implied power or not, is not here determined.

2. The exercise of discretion. On this point we can not see how the respondent can add anything to the written arguments before the examiner and the written arguments used on this motion to which we have given careful attention.

The claim is made that there is no evidence upon which to support the findings and award. We do not so understand the evidence. The injury is conceded; the applicant denies ability to run a shingle saw, and claims total disability. Respondent's evidence is all to the effect that the witnesses think that the applicant will in time recover his efficiency as a shingle sawyer; that the applicant suffers some incapacity must be admitted; the law requires the award to be based upon disability and loss of wage as applied to the employ-

ment in which applicant was performing service at the time of the injury. The commission is not inclined to give the term "employment" as used in the statute, a narrow or restricted construction. It does not appear that respondent has offered applicant employment as a shingle sawyer since his recovery. Nor can the commission see how the applicant will be able to return to such employment. The position of shingle sawyer is an expert position, requiring quick and accurate removal of the spault from the machine and the placing of the new shingle block in the machine about five times per minute. Removing the spault and replacing it with a shingle block must be done in the fraction of a second, if done efficiently. This work requires the use of both hands, and requires the grip of the hand. A fumble might mean another loss of a portion of the hand. The shingle sawyer works in a crew of four, and any inefficiency of his extends to the other members of the crew. If it were shown that there is some other expert position at a machine in a shingle mill where applicant's ability to earn wages is not impaired, we would be inclined to define his employment in terms to include such position; but the evidence does not disclose any such position.

With the policy of the law limiting our consideration to the employment in which the injured employé was performing service at the time of the accident, we have nothing to do. It may be said, however, that our experience so far fully demonstrates that this rule works both ways—to the advantage of the employer quite as often as to the advantage of the employé—and the average award is not large for such injuries. The award in this case figured at present worth amounts to $2,217; this, it may be admitted, is a large award for this injury, but the case on the facts is exceptional.

The respondent complains that the commission practically adopted the findings of the examiner, and that

the examiner had no authority to make findings. We concede that the findings of the examiner had weight in our consideration of the evidence; it was our confidence in his ability and good judgment that caused us to appoint him as examiner. The commission feels that under the law it is not confined to the evidence taken on the hearing in the same degree as courts are in their proceedings. The law contemplates that the commission shall get all the facts and information available and render its award accordingly. The commission calls attention to the note of the legislative committee as justifying this conclusion. The construction given to the section by that committee must be held to have been adopted by the legislature. However, the commissioners examined the evidence and briefs fully, and brought to bear their independent judgment, and arrived at the same verdict as the examiner. Conceding that the examiner had no authority to make findings, still the commission feels that the parties in submitting the case to the examiner for his findings, is not now in a position to object to the power of the examiner to make such findings.

The motion to set aside the award and rehearing is denied.

§ 231. **Decisions of commission—Construction of "wilful misconduct"**—The case of Neumann v. Milwaukee Electric Railway and Light Company[6] construed an instance of "wilful misconduct".

On Feb. 9, 1912, Robert Neumann was in the service of the respondent as a street railway conductor. At about 1:05 a. m. on this date the car on which Robert Neumann was acting as conductor reached the end of the line, and when trolleys had been changed for the run back to car barn, Robert Neumann took the motorman's place and ran the car several hundred feet until

[6] 1 Bulletin Wis. Indus. Com. No. 3, p. 92.

the car struck a curve, left the rails, threw Neumann under the wheels of the car and caused his death.

FINDINGS: Neumann had been instructed and knowingly and intentionally violated the rule. Neumann did not intend to run the car off the track and did not intend to injure himself. At the time of the accident Neumann was not performing service growing out of and incidental to his employment. His death was proximately caused by an accident due to wilful misconduct. Martha Neumann, widow of deceased, is not entitled to compensation.

MEMORANDUM: Robert Neumann, deceased, was a conductor on one of respondent's cars. On the night of Feb. 9, 1912, his car ran "out" to the end of his run and when the trolleys were changed for the run "in" he took the motorman's place and ran the car for some distance until it reached a curve in the track where the car jumped the track, threw Neumann under the wheels and he received injuries causing his immediate death. His widow makes claim for compensation.

Neumann had worked for the company as conductor some six months prior to this accident. The company instructs its conductors when they are first put to work, by placing a competent man on the car with them for some ten days, who shows the beginner how to perform his work. Likewise the motormen are instructed for a period of fifteen days. A conductor is not competent to run the motor until he receives the instructions given motormen. The conductors are instructed not to run the motor and this rule of the company is strictly enforced, and in all cases where there is a violation of the rule coming to the knowledge of the company the employé so violating is disciplined by being laid off without pay for a given time. The rule is well understood by all conductors. Neumann had been instructed in the rule. There is a rule of safety necessary for the protection of the company, its employés and the public.

It may be conceded that the conductor in cases of emergency might in the course of his duties be required to operate the motor. No such emergency is shown in this case. It appears that the deceased violated the rule knowingly and knowing that he was doing wrong in so doing. He did not intend to run the car off the car off the track, nor did he intend to injure himself. The commission is of the opinion that under these circumstances compensation can not be awarded. We hold that the deceased was in the employ of the company and that his death was proximately caused by accident, but at the time of the accident he was not performing service growing out of or incidental to his employment, and that his death came as the result of wilful misconduct on his part.

§ 232. **Decisions of commission—Construction of word "support"**—In Pliska v. Hatton Lumber Company[7] the commission construes the word "support". The evidence showed that on February 15, 1912, Peter Pliska, son of the applicant, was employed by respondent as a sawyer in the woods at $30 per month and board. While engaged in this occupation he was killed by reason of a tree falling upon him. The deceased was about twenty years of age.

AWARD: That respondent pay the applicant the present worth of four times the sum of $100 in weekly installments of $10.58, figured at 3 per cent. interest compounded annually, to-wit, the sum of $397.62, and the sum of $5 for medicines.

MEMORANDUM: Applicant in this case is a farmer living near Stevens Point. He has a farm of 170 acres, with about 90 acres of it under cultivation. The farm is provided with the necessary machinery and live stock. The net value of the farm and other property over and above debts and liabilities, exceeds $7,500. Applicant

[7] 1 Bulletin Wis. Indus. Com. No. 3, p. 95.

has seven children living, ranging in ages from 5 to 25 years. He claims compensation for the death of his son, who while in the employ of respondent was accidentally killed by a tree falling upon him. At the time of his death the deceased was 20 years of age, and had been receiving $30 a month and board. It is in evidence that his board was worth $16 a month. Deceased only worked for the respondent about three or four months in the winter, and the balance of the year he performed services for applicant, his father, on the farm. All the children, with the exception of one son, were making their homes with applicant and working on the farm and contributing their earnings to applicant for living expenses or for living expenses and accumulation. It appears from the evidence that $550 is the fair average annual earning of deceased. It also appears from the evidence that there was a very substantial accumulation of property by the applicant in the year prior to the death of the deceased. Applicant was unable to make it clear to the commission what this amount of accumulation or increase was during that year, but freely admitted that it was quite substantial, and approximated four or five hundred dollars. Some of this was earned by one girl over 21 years of age.

The law provides that in case a deceased employé leaves no one wholly dependent upon him for support and one or more persons partially dependent therefor, the death benefit shall be such percentage of four times such average annual earnings of the employé as the average amount devoted by the deceased employé to the support of the person or persons so partially dependent upon him for support bears to such average annual earnings.

"Support" is defined to mean the necessary shelter, food, clothes, etc., to meet the daily necessities of the dependent, and it is to be determined by the amount

devoted to those purposes during the year preceding the death of the employé.

In this case the applicant and his wife have become more or less incapacitated through age and disease, so that it clearly appears that they were more or less dependent upon their children for support. In other words, without the aid of their children they would not have been able to have managed the farm and provide for their support in their customary manner of living. So we conclude that the deceased did contribute a portion of his earnings for the support of applicant. It is difficult to determine the amount contributed to the applicant for support, but it is our judgment that the percentage contributed to the applicant for support under the statute would equal $100 for the year preceding his death.

The award will therefore go to the applicant for four times the sum of $100 so contributed to applicant for his support. The commission is of the opinion that it is better for all parties concerned that the amount be paid in a gross sum, and therefore the award provides for payment in gross at the present worth of $400 payable in weekly instalments of $10.58, figuring the same at 3 per cent., which amounts to $397.62.

It appears that respondent has paid all medical bills with the exception of $5, which sum was paid by the applicant, and this amount is added to the award.

§ 233. **Decisions of commission—Construction of "casual employment" and time of serving "notice"**—In Brown v. City of Mauston[8] it appeared that on Sept. 26, 1911, the applicant was employed by the respondent to assist in unloading iron material to be used in construction of a bridge by the respondent. While engaged in assisting to unload this material from a wagon, an iron beam fell upon the ankle of the applicant and

[8] 1 Bulletin Wis. Indus. Com. No. 3, p. 97.

bruised the same. Applicant went home and did not call a doctor and did not serve notice of claim for compensation until Jan. 19, 1912, and then claimed a permanent disability. The evidence showed a total disability of only six weeks.

AWARD: That the city of Mauston pay to the applicant $33.14 as compensation for the six weeks of disability, the same being 65 per cent. of the average weekly wage of the applicant.

OPINION: The city sets up the defense of casual employment; we think this defense is not available to a municipality, but only available to private employers. The city also defends on the ground that notice of claim was not served within thirty days after the accident. We are of the opinion that the applicant did not intend to mislead the city by reason of his failure to serve notice and that the city was not in fact thereby misled.

§ 234. Decisions of commission—Meaning of "support" "dependents"—In Dougherty v. State of Wisconsin and State Board of Forestry[9] it was shown that on Dec. 6, 1911, John W. Dougherty, employed as a forest ranger in the state forestry department, met with an accident causing his death. His salary was $75 per month and board.

AWARD: That the State of Wisconsin pay the applicant the sum of $960 as follows: $62.50 on July 1, 1912, and $62.50 on the first of each month thereafter until $960 shall have been paid.

MEMORANDUM: The applicant is the mother of John W. Dougherty, deceased; she is a widow and has no other children. Deceased was employed in the state forestry department, and while so employed, on Dec. 6, 1911, died as the result of an accident received in the course of his employment. His wages at the time of his death were $75 a month and board, making his

[9] 1 Bulletin Wis. Indus. Com. No. 3, p. 99.

annual earnings exceed the maximum provided in the compensation act.

Applicant resides at Minocqua, in this state. She has five cottages, which are rented mostly to people visiting the place as a summer resort. During the year preceding the death of her son she received in rental from the cottages the sum of $415; her disbursements were $473.80, of which amount $174 or thereabouts was expended for permanent improvements on the cottages. Her net income from the cottages less permanent improvements was approximately $115. She received during the year preceding the accident a government pension of $12 a month. Besides the cottages, she owned a store building, the second floor of which was occupied as her dwelling; she conducted a store on the first floor for the sale of groceries and notions; her son had a two-thirds interest in this store.

Applicant claims that she made no profit from the store, and we have no evidence to show that she did make any profit; she claims that it cost her during the year for support approximately $500. We think that this amount is reasonable considering her mode of life. Her son contributed to the joint business and to the support of his mother the whole of his salary less the amount that was necessary for his living expenses. It would appear therefore that the amount actually contributed for the mother's support by the son was the difference between her net income from the pension, $144, and from rental, $115, a total of $259, and the sum of $500 expended by her for support, being $241.

Support is defined to mean the necessary shelter, food, clothes, etc., to meet the daily necessities of the dependent, and it is to be determined by the amount devoted to those purposes during the year preceding his death by the son. The law provides that in case the deceased employé leaves no one wholly dependent on him for support, but one or more persons partially de-

pendent therefor, the death benefit shall be such percentage of four times such average annual earnings of the employé as the average amount devoted by the deceased employé to the support of the person so partially dependent upon him for support bears to such average annual earnings.

The son's contribution, $241, is 32 per cent. of $750, the employé's average annual earnings figured at the maximum provided by law. Four times employé's average annual earnings equals $3,000 and 32 per cent. of $3,000 is $960, which amount is awarded to Alvina Dougherty, mother of deceased, and the same will be payable in monthly instalments corresponding in amount to the monthly wage of deceased figured at the maximum provided by law, until the full amount is paid. One-twelfth of $750 is $62.50, the maximum monthly wage of deceased under the compensation act. The first payment may be made July 1, next, and subsequent payments monthly, on the first day of each month thereafter as follows: 15 months at $62.50 and 1 month at $22.50, making a total of $960.

§ 235. Procedure under the act—Rules of practice:

Rule I. Employers coming under the provisions of Chapter 50, Laws of Wisconsin, 1911, shall post in conspicuous place where most likely to be seen and read by their employés all notices required to be posted by the Commission, and make report thereof to the Commission immediately thereafter. (Sec. 2394—29.) See form No. 6.

Rule II. Employers and employés coming under the provisions of Chapter 50, Laws of 1911, and physicians attending injured employés shall make report to the Industrial Commission of all accidents for which compensation may be claimed, on the 8th day after such accident, and a second report thereon on the 29th day after such accident, such reports to be made on forms

provided or prescribed by the Industrial Commission. (See forms (e) and (f).)

Rule III. In any case where an accident and injury to an employé occurs of which the Commission has jurisdiction under Chapter 50, Laws of Wisconsin, 1911, and compromise of liability thereunder is made directly by such employer or employé, the same shall be made in writing in the presence of one or more disinterested witnesses, who shall sign such compromise as such witnesses and copies of all such compromises shall be immediately mailed to the Commission, by the employer. All compromises may be reviewed, set aside, modified or confirmed by the Commission upon application of either party within one year of the date of compromise. (Sec. 2394—15.)

Rule IV. The Commission will hold public sessions in the offices of the Commission in Madison on the first and second Tuesday of each month and continuing from day to day until all matters before the Commission are heard. The Commission may from time to time hold public sessions in other places in the state as the convenience of the parties may require. The offices of the Commission at Madison shall be open for the transaction of business during office hours each working day. (Sec. 2394—14.)

Rule V. Examiners may be appointed by the Commission from time to time, whose duties shall be to aid the Commission in making settlements between employers and employés, and to make report of their actions and all facts in relation therewith to the Commission. (Sec. 2394—14.)

Rule VI. In case of disputes in matters coming under the jurisdiction of the Commission, either party to the dispute may apply to the Commission for relief and the Commission shall make such order or award as shall be lawful and just in the premises.

In all such cases the party complaining shall file his

application with the Commission, with copies to be served on the adverse party. The Commission shall thereupon serve such adverse party with a copy of such application and such adverse party shall file his answer thereto with the Commission within five days after such service and likewise serve a copy of such answer on the party making the application. The Commission will thereupon notify the parties of the time and place of hearing, at least ten days prior to such hearing. (Sec. 2394—16.)

Rule VII. The parties to the controversy shall be known as the applicant and the respondent. The party filing the application for relief shall be known as the applicant and the adverse party as the respondent. Either party may appear in person or by an attorney or agent.

Rule VIII. All service of papers, unless otherwise directed by the Commission or by law may be made by mail and proof of such mailing shall be prima facie proof of such service. Time within which service shall be made shall be the same as in courts of record unless otherwise specified by rule or order of the Commission.

Rule IX. Amendments may be made to any pleading, order, or award, upon application to the Commission and cause shown. The Commission may also amend any order or award on its own motion upon notice to the parties interested.

Rule X. The Commission may grant extensions of time in which to comply with any rule when it shall deem such extensions of time reasonable and it may likewise grant adjournments of hearings.

Rule XI. Parties to a controversy may stipulate the facts in writing, and the Commission may thereupon make its order or award based upon such stipulation.

Rule XII. Depositions may be taken and used upon any hearing where the convenience of the witnesses or parties may so require. Such depositions shall be taken in the same manner as in courts of record.

§ 236. Circular letter to employers by the commission in explanation of its rules of practice.—In inaugurating its plan of administration the commission sent to all employers a copy of its rules of practice and the forms adopted for use and directed that the employers indicate their acceptance or rejection of the law. It was likewise asked that the employers request a construction of provisions of the law not understood by them. Prompt report of all accidents resulting in personal injuries was demanded and attention was called to the penalties provided for a failure to make such reports.

§ 237. Formal procedure under Wisconsin act.—The Industrial Commission has prescribed certain forms for use in the administration of the act. The list includes forms for employers, employés and casualty companies and for use at hearing before the Commission, which are designated as follows:

(a) Form of employer's written acceptance;

(b) Form of employer's notice of withdrawal;

(c) Form of notice that the employer has filed notice of election to become subject to provisions of act;

(d) Form of notice by employer to the commission of compliance with law;

(e) Form of first report of accident by employer;

(f) Form of supplementary reports on accidents by employer;

(g) Form of answer to application;

(h) Form of notice by employé that he elects to be subject to provisions of act;

(i) Form of notice of employé upon entering employment that he elects not to be subject to act;

(j) Form of notice to employer of claim for injury under act;

(k) Form of application for adjustment of claim;

(l) Form of accident report of casualty company;

(m) Form of notice of hearing;

(n) Form of subpoena;

(o) Form of admission of service;

(p) Form of notice of entry of findings and award made by commission.

Copies of these forms are set out in the following sections:

§ 238. Form of employer's written acceptance: (a)

Industrial Accident Board,
Madison, Wis.

Take notice that the undersigned employer of labor in Wisconsin accepts the provisions of Chapter 50, Laws of 1911, Wisconsin Statutes.[10]

Number of employés_____
Location of place of employment_____
Nature of employment_____
Dated at _____
this_____day of_____
19___ _____
By_____
_____
P. O. Address.

§ 239. Form of employer's notice of withdrawal from operation of act: (b)

Industrial Accident Board,
Madison, Wis.

Take notice that the undersigned employer of labor in Wisconsin hereby withdraws his (her) (its) election to become subject to the provisions of Chapter 50, Laws of Wisconsin, 1911.[11]

Dated at_____
this_____day of_____
19___ _____
By_____
_____
P. O. Address.

---

[10] If employer wishes to accept the provisions of said chapter this notice must be signed by the employer and filed with the Industrial Accident Board. When so filed it becomes immediately binding on the employer. If employer is a corporation the notice should have the corporate name and seal affixed and be signed by an officer having authority so to do.

[11] This notice to be effective, must be filed in the office of the Board at least sixty days prior to the expiration of one year from the filing of the notice of acceptance, or sixty days prior to the expiration of any succeeding year.

§ 240. Form of notice that employer has filed notice of election to become subject to provisions of act. (c)

To all employés in Wisconsin of_____

_____

You will take notice that your employer has this day filed with the Industrial Commission of Wisconsin notice of election to become subject to the provisions of Chap. 50, Laws of Wisconsin, 1911.

(This Law is commonly known as the Workmen's Compensation Act.)

You are further notified that you may serve notice on your employer of your election to come under the act and thereupon the act will immediately apply to you; or

You may within 30 days of this date serve notice on your employer that you elect not to come under the act in which case the act will not apply to you; or

You may not serve either of such notices, in which case you will come under the act at the expiration of 30 days from this date.

Blank forms of notices will be furnished free upon request to the Commission.

Dated at the office of the Commission, Madison, Wis., this_____ day of_____, 191__

§ 241. Form of notice by employer to the commission of compliance with the law. (d)

To the Industrial Commission of Wisconsin:

The undersigned employer on the_____day of_____ 19___, complied with the instructions and Rule 1 of your Commission by posting_____notices (Form (c)) of your Commission in conspicuous places where most likely to be seen and read by_____ employés.[12]

Dated at_____, Wis.,
this_____day of_____,
19___

_____
(Signature of Employer.)
By _____

§ 242. Form of first report of accident. (e)

File No. of Employer_____
(Do not fill in)
File No. of Accident_____
(Do not fill in)

[12] Employer will fill out and return this form to the Industrial Commission of Wisconsin, Madison, Wis.

Employer.

(1) Name _____
(Individual or firm name)

(2) Address _____
(St. No.) (City or town)

(3) Subject to Chapter 50, Laws of 1911_____ (4) Nature of
(Yes or no)
business or industry_____

(5) Location of plant_____
(City or town)

Employé

(6) Name _____

(7) Address _____
(St. No.) (City or town)

(8) Age_____ (9) Sex_____ (10) Married or single_____

(11) Nationality_____ (12) Understand English_____
(Yes or no)

(13) In what language instructed as to duties_____

(14) Physical defect_____ (15) Was injured per-
(Eye or ear or both)
son aware of danger_____ (16) Did injured person make
(Yes or no)
proper use of guards or safety devices_____
(Yes or no)

(17) Was the injury due to wilful misconduct on the part of the employé_____ (18) How long did injured work at or
(Yes or no)
with the thing which caused injury_____ (19) What was the occupation of the person injured_____
(Have in mind the nature of the work done)

(20) Piece or Day Worker_____

(21) Wages, per day_____per week_____

Time, Place and Condition of Accident.

(22) Date of Accident_____M.
(Month) (Day) (Hour)

(23) Day of the week_____ (24) Length of time injured had been at work on day of accident_____ (25) Near window_____
(Yes or no)

(26) Near artificial light_____
(Yes or no)

(27) Condition of lighting_____
(Good or poor)

(28) Workmen congested_____
(Yes or no)

(29) Floor space over-crowded_____
(Yes or no)

Machine or Thing Causing Injury.

(30) What was it_____

(31) In whose control at the time of the accident_____

(32) Part causing the accident_____

(33) Was it guarded at the time of the accident_____

Information furnished by_____

Position _____

Date of Receipt_____

(Do not fill in)

Date of Report_____19___

(Month) (Day)

(34) Describe the guard or safety device_____

_____

_____

(35) How did the accident occur_____

_____

_____

_____

(36) What would you suggest to prevent similar accidents_____

_____

_____

Care of Injured.

(37) Kind of medical and surgical attention given since the accident occurred _____

_____

_____

Nature and Extent of Injury.

(38) Was accident fatal_____

(Yes or no) (State fully the nature and extent of injury)

_____

_____

(39) Probable period of disability_____

(Report in days)

(40) Attending physicians.

_____ _____

(Name) (Address)

_____ _____

(41) Dependents.

(Name)	(Age)	(Relationship)	(Address)

Additional Data.

(42) Remarks _____

_____

§ 243. Form of supplementary reports on accidents. (f)[18]

Employer's name_____
Date _____, 19___
Employer's address_____
(Street and number) (City or town)
Name of injured employé_____
Address of injured employé_____
(Street and number) (City or town)
(1) Date of accident_____
(2) Has injured person returned to work_____
(Yes or no)
(3) On what date_____ (4) At what wages per day_____
(5) At what occupation_____ (6) Medical relief that has been given injured person since your first report_____
(7) Payments made to compensate for injury_____
(Amount)
For period_____ to _____, inclusive.
(Date) (Date)
Payments made to compensate for injury_____
(Amount)
For period_____ to _____, inclusive.
(Date) (Date)
Payments made to compensate for injury_____
(Amount)
For period_____ to _____, inclusive.
(Date) (Date)
(8) If settlement is completed please give the total payment $_____
(Amount)
and the period to which this applies_____
(Date)
to_____ (9) Please file with the Commission
(Date, inclusive.)
copies of all agreements of settlement with employé.
(10) Remarks _____
(11) Information furnished by_____
Position _____

[18] This form has been substituted for form (f) (Second Report of Accident). All employers under the Workmen's Compensation Act are required, in all cases where disability continues for more than seven days:

First: To mail to the Industrial Commission of Wisconsin, Madison, Wis., on this form properly filled out, a Final Report when disability ceases.

Second: To mail to the said Commission on this form properly filled out, a report at the end of each Fourth week during disability.

§ 244. Form of answer to application. (g)[14]

---------- Applicant,

vs.

---------- Respondent.

The respondent above named for answer to the application herein respectfully shows:

1. (State all facts in application that are admitted not to be in dispute.)

---

2. (State pertinent facts in reply to application, that are in dispute.)

---

3. State such additional facts as may constitute a defense or partial defense,

---

---

4. Wherefor the respondent prays (stating relief asked),

(Signed) ----------

(Respondent.)

§ 245. Form of notice by employé that he elects to be subject to provisions of act. (h)

To ----------

(Write name of employer plainly on above line.)

(Write address of employer plainly on above line.)

Take notice that as your employé, I hereby elect to become subject to the provisions of Chap. 50, Laws of Wisconsin, 1911.[15]

---

[14] The respondent shall answer the application within five days from the date that a copy of the application is served upon him.

The original answer shall be mailed to the Industrial Accident Board at Madison, Wis., and a copy thereof served upon the applicant by respondent either personally or by mailing to the address given in the application.

[15] If employer elects to become subject to Chap. 50, Laws 1911, employés then in service may immediately serve above notice upon employer and thereupon likewise become subject to Chap. 50, Laws 1911.

Unless the employé gives notice to the contrary and without giving above notice, he will become subject to Chap. 50, Laws 1911, by remaining in such employ 30 days after the filing of such acceptance by employer.

Dated at _____,
this_____day of_____, 191__
(Employé) _____
(Address) _____

§ 246. Form of notice of employé upon entering employment that he elects not to be subject to act. (i)

To _____
(Write name of employer plainly on above line.)
_____
(Write address of employer plainly on above line.)

You will take notice that being about to enter your employ, I elect not to be subject to the provisions of Chap. 50, Laws of Wisconsin, 1911.[16]

(Employé) _____
(Address) _____
Dated at _____
this_____day of_____, 191__

§ 247. Form of notice to employer of claim for injury under act. (j)[17]

To _____
(Write name of employer plainly on above line.)
_____
(Write address of employer plainly on above line.)

You will take notice that according to the provisions of Chap. 50, Laws of Wisconsin, 1911_____
_____hereby makes claim for compensation for injury received by_____while in your employ.
Name of employé_____
Post Office Address_____
The accident occurred the_____day of_____, 191__
at_____, Wisconsin.

---

[16] If employer has elected to become subject to provisions of the act, then upon entering the service the employé comes under the act likewise unless he gives the employer the above notice at the time he enters such service.

[17] This notice should be filled out by injured employé or some one in his behalf. In case of death of employé notice is to be filled out by dependent. Notice should be served within 30 days of accident on employer by delivering a copy of the above notice to employer personally or by registered mail.

Fill out in duplicate. Hand or mail one copy to employer, mail the other copy to the Industrial Accident Board, Madison, Wis.

The nature of the injury is as follows:

Signature _____

Address _____

Dated at _____

this_____day of_____

§ 248. Form of application for adjustment of claim. (k)

State of Wisconsin.

_____ Applicant,

vs.

_____ Respondent.

_____ Respondent.

The petition of the above named applicant respectfully shows:

1. State address of applicant,

---

2. State occupation of applicant,

---

3. State address of respondent(s),

---

4. State general nature of claim in controversy, including time and place of accident,

---

---

5. State kind of relief demanded,

---

6. Wherefore the applicant prays that the said respondent be required to answer the charges herein and that an order or award be made by the Industrial Accident Board granting such relief as the applicant may be entitled to in the premises.[18]

Dated at_____, this_____ day of_____, 191__

(Signed)_____

(Applicant.)

---

[18] Either party to the dispute may apply to the Board for an adjustment of the matter in difference. The original application and one copy for each respondent shall be mailed to the Industrial Accident Board, Madison, Wis.

§ 249. Form of accident report of casualty company. (1)

(Give name of Insurance Company)

To

INDUSTRIAL COMMISSION OF WISCONSIN

(Successor to Industrial Accident Board)

MADISON, WISCONSIN,

Report only those accidents where the probable period of disability as reported by the employer is more than seven days.

1. Name of employer_____
2. Address of employer_____
(St. No.) (City or Town)
3. Name of injured person_____
4. Address of injured person_____
(St. No.) (City or Town)
5. At what place working_____
(St. No.) (City or Town)
6. Date of accident_____191_
(Month) (Day)
7. Probable period of disability_____
8. What machine or thing caused the injury_____
9. Cause of accident_____

---

§ 250. Form of notice of hearing. (m)[19]

_____ Applicant,

vs.

_____ Respondent.

To the parties above named and to each of them.

Notice is hereby given that on the_____day of_____ 191__, at ten o'clock in the forenoon or as soon thereafter as the matter can be heard at_____

_____

a hearing on the application in such matter will be had by the Board to determine and adjust the difference in dispute as set forth in the application on file.

The general nature of the claims is as follows:

_____

_____

Dated at Madison, Wis., this_____day of_____191__

INDUSTRIAL ACCIDENT BOARD,

By_____

Secretary.

---

[19] Parties may appear at any hearing personally or by agent or attorney.

§ 251. Form of subpoena: (n)

STATE OF WISCONSIN,)
)ss:
County of_____)

State of Wisconsin to_____
_____

You are hereby required to appear before the Industrial Accident Board of Wisconsin at the city of_____, county of _____at_____at_____o'clock in the_____ noon to give evidence in a certain proceeding pending before said Board wherein_____is Applicant, and_____ is Respondent.

Hereof fail not at your peril.

Given under our hands this_____day of_____ A. D. 19__

INDUSTRIAL ACCIDENT BOARD OF WISCONSIN,
By _____ Member of Board.

§ 252. Form of admission of service. (o)

Admission of service of_____
in re _____
Applicant, vs. _____
Respondent, is hereby admitted at_____
Wisconsin, this_____day of_____, 19__

_____

§ 253. Form of notice of the entry of findings and award made by the commissioners. (p)

In the Matter of
_____, Applicant,
vs.
_____, Respondent.
State of Wisconsin,)
)ss:
County of Dane.)

I, P. J. Watrous, Secretary of the Industrial Commission of Wisconsin, hereby certify that I have compared the attached copy of Findings and Award, with the original Findings and Award of the Industrial Commission of Wisconsin, made in the above entitled matter and filed in the office of said Industrial Commission of Wisconsin, in the Capitol in the City of Madison, Wisconsin, on the_____ day of_____, 191__, and that the same is a true copy thereof.

Dated at the City of Madison, Wis.,
this_____day of_____, 19__

(Seal) _____ Secretary.
INDUSTRIAL COMMISSION OF WISCONSIN.

CHAPTER XIII.

NEW JERSEY COMPENSATION ACT.

Sec.

254. Nature and scope of act.
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§ 254. Nature and scope of act.—The New Jersey act is divided into two sections compensations by action at law and elective compensation. The act permits an election by either of the parties and allows a termination of the agreement after election on sixty days notice in writing prior to any accident. Where the election is made the elective compensation is to be paid in case of injury or death without regard to the negligence of the employer unless the injury or death is intentionally self-inflicted or is due to the intoxication of the employé. Whether the injury or death is due to these latter causes is a question of fact for the jury and to be established by the employer. The common-law defenses of fellow servant, contributory negligence and assumption of risk are abolished. All employments except casual are covered by the act and the employer is held directly liable to pay the compensations as provided in the law. Compensation begins two weeks after the accident but the expenses of medical and surgical aid not to exceed $100 during the first two weeks after the injury is received. The act as it now stands works

automatically without the intervention of commissions and boards of award.[1]

Note by Commissioner of Labor—This act automatically places every contract of employment under the compensation section, but permits either party to elect not to be subject to its provisions, to have recourse to action at law for compensation.

§ 255. Text of New Jersey workmen's compensation act.—The act is entitled an act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder. It became effective July 4, 1911. It provides:

SECTION I. COMPENSATION BY ACTION AT LAW.

1. When personal injury is caused to an employé by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employé was himself not wilfully negligent at the time of receiving such injury, and the question of whether the employé was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence.

2. The right to compensation as provided by section I of this act shall not be defeated upon the ground that the injury was caused in any degree by the negligence of a fellow employé; or that the injured employé assumed the risks inherent in or incidental to or arising out of his employment or arising from the failure of the

[1]The act has not been construed by the Supreme Court at the time this is written. It has been upheld in the court of Common Pleas of Essex county in a most instructive opinion by Justice Martin in the case of Sexton v. Newark Dist. Tel. Co. reported in 34 N. J. Law Journal, p. 368, and 35 N. J. Law Journal, p. 8.

employer to provide and maintain safe premises and suitable appliances; which said grounds of defense are hereby abolished.

3. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract, written or verbal, with a subcontractor to do all or any part of such work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer under this act for injury caused to an employé of such contractor or subcontractor by any defect in the condition of the ways, works, machinery or plant if the defect arose or had not been discovered and remedied through the negligence of the employer or some one entrusted by him with the duty of seing that they were in proper condition. This paragraph shall apply only to actions arising under section one.

4. The provisions of paragraphs one, two and three shall apply to any claim for the death of an employé arising under an act entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect or default," approved March third, eighteen hundred and forty-eight, and the amendments thereof and supplements thereto.

5. In all actions at law brought pursuant to section I of this act, the burden of proof to establish wilful negligence in the injured employé shall be upon the defendant.

6. No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, unless the same be approved in writing by the judge or justice presiding at the trial, or in case of settlement without trial, by the judge of the circuit court of the district in which

such issue arose; provided, that if notice in writing be given the defendant of such claim for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided.

SECTION II. ELECTIVE COMPENSATION.

7. When employer and employé shall by agreement, either express or implied, as hereinafter provided, accept the provisions of section II of this act, compensation for personal injuries to or for the death of such employé by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in paragraph eleven, in all cases except when the injury or death is intentionally self-inflicted, or when intoxication is the natural and proximate cause of injury, and the burden of proof of such fact shall be upon the employer.

8. Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in section II of this act, and an acceptance of all the provisions of section II of this act, and shall bind the employé himself and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

9. Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of section II of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of section II of this act are not in-

tended to apply, then it shall be presumed that the parties have accepted the provisions of section II of this act and have agreed to be bound thereby. In the employment of minors, section II shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.

10. The contract for the operation of the provisions of section II of this act may be terminated by either party upon sixty days' notice in writing prior to any accident.

11. Following is the schedule of compensation:

(a) For injury producing temporary disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks.

(b) For disability total in character and permanent in quality, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred weeks.

(c) For disability partial in character but permanent in quality, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to wit:

For the loss of a thumb, fifty per centum of daily wages during sixty weeks.

For the loss of a first finger, commonly called index

finger, fifty per centum of daily wages during thirty-five weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; providing, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten weeks.

For the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of daily wages during one hundred and fifty weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred weeks.

For the loss of a foot, fifty per centum of daily wages during one hundred and twenty-five weeks.

For the loss of a leg, fifty per centum of daily wages during one hundred and seventy-five weeks.

For the loss of an eye, fifty per centum of daily wages during one hundred weeks.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of clause (b).

In all other cases in this class the compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. Should the employer and employé be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of paragraph twenty hereof.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as are stated in clause (a).

12. In case of death compensation shall be computed but not distributed on the following basis:

(1) Actual dependents.

If orphan or orphans, a minimum of twenty-five per centum of wages of deceased, with ten per centum additional for each orphan in excess of two, with a maximum of sixty per centum.

If widow alone, twenty-five per centum of wages.

If widow and one child, forty per centum of wages.

If widow and two children, forty-five per centum of wages.

If widow and three children, fifty per centum of wages.

If widow and four children, fifty-five per centum of wages.

If widow and five children or more, sixty per centum of wages.

If widow and father or mother, fifty per centum of wages.

If grandparents, grandchildren, or minor, or incapaci-

tated brothers or sisters, twenty-five per centum of wages.

Compensation in case of death shall be computed on the basis of the foregoing schedule, but shall be distributed according to the laws of this State providing for the distribution of the personal property of an intestate decedent, unless decedent has in fact left a will.

(2) No dependents.

Expenses of last sickness and burial not exceeding two hundred dollars.

In computing compensation to orphans or other children, only those under sixteen years of age shall be included, and only during the period in which they are under that age, at which time payment on account of such child shall cease.

The compensation in case of death shall be subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employé receives wages of less than five dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during three hundred weeks.

Compensation under this schedule shall not apply to alien dependents not residents of the United States.

13. No compensation shall be allowed for the first two weeks after injury received, except as provided by paragraph fourteen, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in paragraph fifteen.

14. During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services and medicines, as and when needed, not to exceed one hundred dollars in value, unless the employé refuses to allow them to be furnished by the employer.

15. Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employé, or some one on his behalf, or some of the dependents,

or some one on their behalf, shall give notice thereof to the employer within fourteen days of the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety days, and if the employé, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed, unless, and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Unless knowledge be obtained, or notice given, within ninety days after the occurrence of the injury, no compensation shall be allowed.

16. The notice referred to may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it through the mail to the employer at the last known residence or business place thereof within the State, and shall be substantially in the following form:

To (name of employer):

You are hereby notified that a personal injury was received by (name of employé injured), who was in your employ at (place) while engaged as (nature of employment), on or about the ( ) day of ( ), nineteen hundred and ( ), and that compensation will be claimed therefor.

Signed,

( ).

But no variation from this form shall be material if

the notice is sufficient to advise the employer that a certain employé, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. Notice served at the office of, or on the person who was the employé's immediate superior, shall be a compliance with this act.

17. After an injury, the employé, if so requested by his employer, must submit himself for examination at some reasonable time and place within the State, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employé requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect of the period of suspension.

18. In case of a dispute over, or failure to agree upon, a claim for compensation between employer and employé, or the dependents of the employé, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided to the judge of the court of common pleas of such county as would have jurisdiction in a civil case, or where there is more than one judge of said court, then to either or any of said judges of such court, which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding.

19. In case of death, where no executor or administrator is qualified, the said judge shall, by order, direct payment to be made to such person as would be appointed administrator of the estate of such decedent upon like terms as to bond for the proper application of

compensation payments as are required of administrators.

20. Procedure in case of dispute shall be as follows:

Either party may present a petition to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. This petition shall be verified by the oath or affirmation of the petitioner.

Upon the presentation of such petition the same shall be filed with the clerk of the court of common pleas, and the judge shall fix a time and place for the hearing thereof, not less than three weeks after the date of the filing of said petition. A copy of said petition shall be served as summons in a civil action and may be served within four days thereafter upon the adverse party. Within seven days after the service of such notice the adverse party shall file an answer to said petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for a petition.

At the time fixed for hearing or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the common pleas court, and judgment shall be entered thereon in the same manner as in causes tried in the court of common pleas, and shall contain a statement of facts as

determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services in the common pleas court.

21. The amounts payable periodically as compensation may be commuted to one or more lump sum payments by the judge of the court of common pleas having jurisdiction as set forth in the preceding paragraph, upon the application of either party in his discretion, provided the same be in the interest of justice. Unless so approved, no compensation payments shall be commuted.

An agreement or award of compensation may be modified at any time by a subsequent agreement, or at any time after one year from the time when the same became operative it may be reviewed upon the application of either party on the ground that the incapacity of the injured employé has subsequently increased or diminished. In such case the provisions of paragraph seventeen with reference to medical examination shall apply.

22. The right of compensation granted by this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid wages for labor. Claims or payments due under this act shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment.

SECTION III. GENERAL PROVISIONS.

23. For the purposes of this act, wilful negligence shall consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as evidences reckless indiffer-

ence to safety, or (3) intoxication, operating as the proximate cause of injury.

Wherever in this act the singular is used the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

Employer is declared to be synonymous with master and includes natural persons, partnerships and corporations; employé is synonymous with servant and includes all natural persons who perform service for another for financial consideration, exclusive of casual employments.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

24. In case for any reason any paragraph or any provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that sections I and II are hereby declared to be inseparable, and if either section be declared void or inoperative in an essential part, so that the whole of such section must fall, the other section shall fall with it and not stand alone. Section I of this act shall not apply in cases where section II becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension of the common law.

25. Every right of action for negligence, or to recover damages for injuries resulting in death, existing before this act shall take effect, is continued, and nothing in this act contained shall be construed as affecting any such right of action, nor shall the failure to give the notice provided for in section II, paragraph fifteen of this act, be a bar to the maintenance of a suit, upon any right of action existing before this act shall take effect.

26. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 256. Text of supplementary act saving existing contracts.—The matter of existing contracts at the time of the enactment of the foregoing act was covered by the following supplementary act which became effective July 4, 1911. It reads:

1. Every contract of hiring, verbal, written or implied from circumstances, now in operation or made or implied prior to the time limited for the act to which this act is a supplement to take effect, shall, after this act takes effect, be presumed to continue subject to the provisions of section two of the act to which this act is a supplement, unless either party shall, prior to accident, in writing, notify the other party to such contract that the provisions of section two of the act to which this act is a supplement are not intended to apply.

§ 257. Text of act creating the employer's liability commission.—This act is entitled an act creating the employers' liability commission and prescribing its powers and duties, and requiring reports to be made by the employers of labor upon the operations of the employers' liability law for the information of said commission. This act became effective April 27, 1911. It provides:

1. The Governor is hereby authorized to appoint six citizens of this State as an employers' liability commission, who shall hold their offices for the term of two years and until their successors are appointed and qualified. They shall receive no compensation for their services, but their actual traveling expenses incurred upon the business of the commission shall be paid by the State Treasurer, upon warrants approved by the president of the said commission. The commission shall have power to choose one of their number as president and one of their number as secretary, and shall have power to appoint a clerk. The expenses of the commission, the salary of the secretary and of the clerk shall

be paid from appropriations made for that purpose in any annual or supplemental appropriation bill. It shall be the duty of the commission to observe in detail, so far as possible, the operations throughout the State of the recent act of the Legislature commonly known as "The Employers' Liability Act" entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

2. From and after the fourth day of July next, when the said law becomes operative, every employer of labor within the State of New Jersey shall report to said commission, upon the occurrence of any injury to any of his employés the name and nationality of the employé so injured, the nature and extent of such injury, whether said injured employé and the employer at the time of said injury were subject to the provisions of section one or section two of said act, and the amount of compensation when determined, together with such other facts relating to such injury as the commission may request. The information thus received shall be tabulated, from time to time, and the records thereof shall be the private records of the commission; they shall not be made public or open to inspection unless in the opinion of the commission the public interests shall require it, and they shall not be used as evidence against any employer in any suit or action at law brought by any employé for the recovery of damages. The commission shall hold meetings, from time to time, as they may deem necessary, and shall present to each session of the Legislature a report showing the operations under the said act during the preceding year, together with any suggestions or recommendations which they may deem necessary or proper for the improvement of the said

act, in order to accomplish with the greatest efficiency the purposes of the said act.

§ 258. Text of act requiring reports of industrial accidents to be made to the Department of Labor.—A statute makes it the duty of employers to report all industrial accidents. This act became effective March 26, 1912. It provides:

1. Upon the happening of any accident in any employment of labor in this state, the result of which shall be to prevent the injured person or persons from resuming work within two weeks after the happening thereof, the employer of such injured person or persons shall report, in writing, to the Commissioner of Labor the time, place and cause of the said accident, as nearly as the same may be fairly ascertained, the extent of injuries received, and such other facts as the Commissioner of Labor may, by rule or regulation, require. In case of injury not producing death, such report shall be filed within four weeks after the happening of such injury. In case of injury producing death, report shall be filed within two weeks thereafter. Such reports may be forwarded by mail, postage prepaid.

2. All companies engaged in casualty insurance business within the state of New Jersey shall furnish to the Commissioner of Labor a full and complete report of all accidents to the employés of any person, firm, or corporation insured by them, which prevents such injured person or persons from resuming work within two weeks after the happening of such injury, or which result in death. In case of injury not producing death, such report shall be filed within four weeks after such injuries have been reported to such insurance company, or such insurance company has otherwise gained knowledge thereof. In case of injury producing death, such report shall be filed within two weeks after such death has been reported to such insurance company, or such

insurance company has otherwise gained knowledge thereof. Such reports shall state the time, place and cause of injury, as nearly as the same may be ascertained, and the extent thereof, and such other and further information as the Commissioner of Labor may, by rule or regulation, require. Such notice may be sent by mail, postage prepaid.

3. The report filed with the Commissioner of Labor, in accordance with the provisions of this act, shall not be made public, and shall not be opened to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by any employé for the recovery of damages, but such reports shall always be at the service and use of the Employers' Liability Commission. Reports filed in accordance with this act shall be in lieu of all other reports required to be filed pursuant to the provisions of an act entitled "An act creating the Employers' Liability Commission and prescribing its powers and duties, and requiring reports to be made by the employers of labor upon the operations of the Employers Liability Law for the information of said commission," approved April twenty-seventh, one thousand nine hundred and eleven, and shall be considered to be compliance with the terms of the last mentioned act.

4. Any corporation, firm or person violating any of the provisions of this act shall for each offense be liable to a penalty of fifty dollars, to be recovered in an action of debt, brought by the Commissioner of Labor, in the name of the State of New Jersey. Each failure to report shall be regarded as a separate offense.

Approved March 26, 1912.

§ 259. Construction of act and procedure thereunder.—The New Jersey Workmen's Compensation Act

does not provide for the creation of a Board of Administration of the Act, but does provide for the creation of the "Employer's Liability Commission to observe in detail, so far as possible, the operation throughout the state of the Workmen's Compensation Act." The law requires that every employer of labor report to the said commission certain facts regarding every accident causing injury to any of his employés which entails a disability of two weeks, and that said commission report annually to the Legislature showing the operations under the said act during the preceding year, together with any suggestions or recommendations which they may deem necessary for the improvement of the said law.

Since March 26, 1912[2] the law requires all liability insurance companies to report to the Commissioner of Labor all accidents causing disability of two weeks, coming under their hands, both as to the extent of the injury and the amounts paid on account of such accidents.

Only two forms have been prescribed. One form is to be made out by employers and the other is to be filled out by all Liability Insurance companies and filed with the said commissioner. These two forms preceded by certain constructions of the compensation law and procedure under it are set out in the succeeding sections.

§ 260. **Form of accident blank for report by employer:**

To Employers of Labor of Any Kind:

The law requires that all accidents which prevent the injured person from returning to work within two weeks, or which result in death, shall be reported in writing to the Department, at Trenton, New Jersey, within four weeks, or after the death of such person injured, within two weeks.

Your attention is directed to the fact that the law provides a fine when such reports are not made in the manner specified.

For such purpose this blank is furnished. Use a blank for each

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[2] See post § 261.

person injured, and, when more blanks are needed, notify the Department.

This blank is to be filled out in full according to the facts at the time of reporting. In case the accident herein reported results subsequently in death, that fact should then be immediately reported.

The purpose of these reports is statistical and preventive.

It is the desire of the Department to have the manufacturers of the State co-operate with it in the effort being made of preventing accidents, and the Department is particularly anxious to receive suggestions calculated to guard against a repetition of accidents coming under the observation of manufacturers, especially improvements in the guarding of machinery, etc.

LEWIS T. BRYANT, Commissioner of Labor.

One purpose of these reports is to secure as definite information of the operation of the Employers' Liability Act as can be obtained, and the law directs that they shall always be at the service and use of the Employers' Liability Commission to enable them to investigate the operations of said act, in order to present to each session of the Legislature a report showing the operations under said act, together with suggestions and recommendations for its improvement.

To that end the Employers' Liability Commission is most anxious to secure the kindly help of employers of all kinds of labor throughout the State, by comment, criticism or suggestion.

WILLIAM E. STUBBS, Secretary.

(Name of firm.)

(Business.)

(P. O. Address.)

Reports that the person named opposite was injured on the premises No._____Street,_____(city or village) on the_____day of_____19___

A. If this is a second report, draw a line from A to B canceling questions covered.

Nature and extent of injury_____

Cause and manner of the accident. (a) State fully how the accident occurred (indefinite or incomplete reports will be returned for correction) _____

Has any accident ever occurred to any of the employés under similar circumstances at the same place or with the same apparatus?

Was part of machine causing the injury properly guarded at time of accident?_____

If so, how?_____

_____

_____

Was the person injured regularly employed on such machine or on the particular work at which injured?_____

_____

If so, how long?_____

Can you suggest a practical method against a repetition of this accident? _____

_____

_____

_____ B

Date of reporting_____

Report every accident which entails disability of two weeks, medical aid[3] or compensation.

To be forwarded to the Department of Labor, Trenton, N. J.

_____

(Name of person injured.)

_____

(Street residence.)

_____

(City or village.)

_____

(Occupation.)

Sex_____ Age_____ Married?_____

Nationality _____

Is this the first or second REPORT of this case? _____

Is there another report of this case to FOLLOW? _____

Did you GIVE written notice that the compensation provisions of section two of the Employers' Liability Act were not to apply to this employé? _____

Did you RECEIVE such notice from this employé? _____

Did the injury result in DEATH? _____

Is the disability permanent and TOTAL, as per clauses (b) and (c), paragraph II, of Liability Law? _____

Is the injury permanent and PARTIAL? _____

Did the injury REQUIRE medical aid? _____

Did you SUPPLY all the medical aid required during the first two weeks? _____

State the COST of medical aid rendered by you. _____

How much TIME did the employé lose due to the injury? _____

State the amount of weekly WAGES. _____

Has, or will, this employé, or dependents, receive COMPENSATION weekly? _____

[3] The term medical aid will probably be stricken out of next issue of blanks.

If so, how MUCH per week? ----------
And for how MANY weeks? ----------
In case of death, state number of DEPENDENTS. ----------
In case of death, with no dependents, state cost of last sickness and BURIAL. ----------
State TOTAL, to which it will amount for all items, paid and to be paid. ----------
Was this case submitted to the Judge of the COURT of Common Pleas for settlement or adjustment? ----------
If so, specify the Court, ----------
If no compensation was or is to be paid to the injured, state grounds for not so doing----------
---

If case is not yet closed, make a second report giving the final figures, at termination of disability, or if death results later.

This Department should be notified of any subsequent modification of agreement of award or commutation thereof.

(Signature of firm reporting.)

Printed in copying ink for convenience of persons desiring to retain copy.

§ 261. Form of report by insurance company to commissioner of labor on accident and compensation paid.

(Name of insured employer.)

(P. O. address.)

On second report omit replies to questions answered on first report.

Nature and extent of injury----------

Cause of accident----------

If no compensation was or is to be paid, state grounds for not so doing----------
---

If case is not yet closed, make a second report, giving the final figures, at the termination of disability, or if death results later.

This Department should be notified of any subsequent modification of agreement or award, or commutation thereof.

Date of reporting_____

To be forwarded to the Department of Labor, Trenton, NEW JERSEY.

(Name of person injured.)

On the_____day of_____19____

Is this first or second REPORT of this case? _____

Is there another report of this case to FOLLOW? _____

Was injured subject to SECTION 1 or 2 of the Liability Law? _____

Did the injury REQUIRE medical aid? _____

Was medical aid SUPPLIED in accordance with law? _____

State approximate COST of medical aid. _____

Has, or will, this employé, or dependents, receive COMPENSATION weekly? _____

If so, how MUCH per week? _____

And for how MANY weeks? _____

In case of death, with no dependents, state cost of last sickness and BURIAL. _____

State TOTAL to which it will amount for all items, paid and to be paid. _____

(Signature of Insurance Co.)

CHAPTER XIV.

THE CALIFORNIA WORKMEN'S COMPENSATION ACT.

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§ 262. The nature and scope of the act.—The California act is an adaptation of the Wisconsin statute with

slight modifications. Briefly stated, it abolishes the defenses of fellow servant and assumption of risk and establishes the doctrine of comparative negligence in actions for injuries to employés. The employer is denied the right to exemption from liability under contracts, rules or regulations. Where the employer elects to be bound by the statutory compensations and his employé does not notify the employer of his unwillingness to be bound thereby, then the compensation for injury or death is that fixed by the statute unless the injury is due to the personal gross negligence or wilful personal misconduct of the employer or his violation of a statutory duty. Where the injuries are due to these causes, the employé may, at his option, claim compensation under the act or, he may sue his employer and the employer may interpose only the single defense of comparative negligence. Compensation will be denied the employé where the injury is the result of his own wilful misconduct.

§ 263. The California act and its construction by the board.—The act is entitled, "An act relating to the liability of employers for injuries or death sustained by their employés, providing for compensation for the accidental injury of employés, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards." The act was approved April 8, 1911, and became effective September 1, 1911. It provides:

Section 1. In any action to recover damages for a personal injury sustained within this state by an employé while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, the fact that such employé may have been

guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of negligence attributable to such employé, and it shall be conclusively presumed that such employé was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employés contributed to such employé's injury; and it shall not be a defense:

(1) That the employé either expressly or impliedly assumed the risk of the hazard complained of.

(2) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

Note by board—The foregoing section abolishes the common-law doctrine of assumption of risk and the fellow-servant rule, and modifies the defense of contributory negligence, thereby increasing the liability of the employer in excess of 300 per cent.

This portion of the act is not elective and applies to every employer. In an action at law, there is no limit placed upon the amount of damages that may be recovered for personal injuries sustained. If, however, an employer elects the compensation schedule fixed by the succeeding sections of the act, the amount that may be recovered by an injured employé is limited to the scale of compensation specified in section 8 of the act. In determining whether or not he will elect compensation, a prudent employer will take into consideration his increased liability, the present tendency of the courts and juries to allow heavy damages for personal injuries, and the fact that the ordinary indemnity insurance is limited to $5,000 for a single injury and to $10,000 where more than one person is hurt through a single accident. The New York Commission investigated two hundred and thirty-four fatal cases, and found that 2.1 per cent. of the recoveries allowed were in excess of $5,000. Statistics show that when an accident causes permanent disability, a larger sum is awarded the injured than is paid where the accident results in death. This is exemplified by the recent decision of the Supreme Court of the State of California, affirming a judgment for $70,000, which, together with accrued interest and costs, amounted to $92,000. These instances plainly show that insurance under the old system of employers' liability is wholly inadequate, and that

only through compensation, with its limited risks, can the employer be fully protected.

Section 2. No contract, rule or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.

Note by board—This section makes it impossible for an employer to avoid liability for damages by obtaining from his employé, as a condition precedent to employment, a waiver of liability which would impair the employé's rights under this act.

Section 3. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury accidentally sustained by his employés, and for his death if the injury shall approximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employé are subject to the provisions of this act according to the succeeding sections hereof.

(2) Where, at the time of the accident, the employé is performing service growing out of and incidental to his employment and is acting within the line of his duty or course of his employment as such.

(3) Where the injury is approximately caused by accident, either with or without negligence, and is not so caused by the wilful misconduct of the employé.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death, except that when the injury was caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employés from bodily injury, the employé may, at his option, either claim compensation under this act, or maintain an action

for damages therefor; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

Note by board—Compensation must be paid for any personal injury accidentally sustained by an employé, whenever these facts appear:

(1) Both employer and employé are subject to the compensation provisions of the act.

(2) Injury approximately caused by accident.

(3) Employé at the time of the accident was performing service, within scope of employment and growing out of and incidental to his employment.

(4) Such injury was not caused by wilful misconduct of injured employé.

An accident has been defined as "a bodily injury arising out of the sudden action of a violent, fortuitous and external cause."

It makes no difference who is to blame for the accidental injury; it is sufficient that the injury was received while the employé was performing the proper services of his employment. Only wilful misconduct, that is to say "intentional" misconduct, on the part of the injured employé can relieve the employer from liability for compensation.

When the conditions of compensation exist, the right to compensation becomes the exclusive remedy of the injured employé, unless

(1) The injury was caused by the "personal gross negligence" or "wilful personal misconduct" of employer; or,

(2) By reason of his violation of any statute designed for the protection of his employés from bodily injury.

In either of such cases the employé may elect compensation or proceed at law for damages.

The workman is denied the right to compensation where the accident results from his wilful misconduct, and likewise the employer is denied the benefit of compensation (at the option of the workman) if the accident results from the gross "personal" fault or misconduct of the employer.

In our act, the option is given to the employé only when the accident is caused by the "gross personal" fault of the employer. The negligence or misconduct of another can not be imputed to the employer.

Section 4. The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

(1) The state, and each county, city and county, city, town, village and school districts and all public corporations, every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employé for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, at the time of such accident, have withdrawn such election, in the manner provided in the next section.

Note by board—This section, when read in connection with sections 6 and 7, defines the two classes of employers to which the compensation schedule applies.

(1) The state, and each county, city and county, city, town, village and school district and all public corporations.

(2) All private employers who shall have elected to come within the compensation provisions of the act.

Except in so far as it may conflict with the constitutional provisions relative to charter cities, there can be little doubt as to the right of the legislature to provide for the compensation of those in the public service. Since compensation to injured workmen is based upon broad considerations of public welfare, as well as the resultant benefit to the individual, the state and its subdivisions should be the first to extend to employés the compensation which the state recommends to private employers.

Officials of the public bodies named should make proper provisions for the compensation fixed.

Section 5. Such election on the part of the employer shall be made by filing with the industrial accident board, hereinafter provided for, a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section three of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to

the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he withdraws his election to be subject to the provisions of the act.

Note by board—By filing the statement with the Industrial Accident Board, the employer voluntarily accepts the compensation schedule of the act for the term of one year. Since compensation legislation is in a sense experimental in California, and its ultimate success dependent upon the co-operation of the employer, it was thought best to allow an employer to elect the compensation for a limited term, with the right to withdraw his election at the expiration of the term in the event he found compensation unsatisfactory.

Since this act was passed a constitutional amendment designed to meet any constitutional objections has been adopted by the people of this state, and it is probable that at some future time a compulsory act will be adopted.

Section 6. The term "employé" as used in section three of this act shall be construed to mean:

(1) Every person in the service of the state, or any county, city and county, city, town, village or school district therein, and all public corporations, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city and county, city, town, village or school district therein or any public corporation, who shall have been elected or appointed for a regular term of one or more years, or to complete the unexpired portion of any such regular term.

(2) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employés), but not including any person whose employment is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

Note by board—This section defines the two classes of employés:

(1) Public employés.

(2) Private employés.

In the first class a distinction is made between an "employé" and an "official." Public officials are not included in the compensation benefits.

In the second class a distinction is made between the ordinary employé and the employé "whose employment is but casual, and not in the usual course of the trade, business, profession or occupation of his employer." Such employés are excluded from the compensation benefits.

Section 7. Any employé as defined in subsection (1) of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employé as defined in subsection (2) of the preceding section shall be deemed to have accepted and shall, within the meaning of section 3 of this act be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

(1) The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

(2) At the time of entering into his contract of hire, express or implied, with such employer, such employé shall not have given to his employer notice in writing that he elects not to be subject to the provisions of this act, or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of the act, such employé shall, without giving such notice, remain in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

Note by board—(1) "Public Employés." As to such persons, the act is compulsory. No recovery can be had against the state by an individual unless given the right by statute. Since the legislature can deprive an injured person of all right against the state to compensation, it can compel such person to accept the compensation it chooses to extend.

(2) "Private Employés." The same reasons which impelled the

legislature to make the act optional with employers apply with equal force to employés. After an acceptance has been filed by the employer, the workman may elect whether he desires to accept compensation or retain his common-law right to sue. If the employer has accepted the compensation schedule, then the employé comes under its provisions, unless (1) at the time of entering into the employment, the employé gives the written notice required by this section; or (2), if the contract of hire was made before the date of the employer's acceptance, the employé gives said notice within thirty days. In either case, the dependents of a deceased workman are bound by his election.

In England and some other jurisdictions, the workman is not compelled to make his election until after the happening of the accident, but our legislature felt that it was unfair to the employer to allow a workman to sue at law in ordinary instances, if he thought he could get more by so doing, and apply for compensation when no legal liability existed. Furthermore, if he could elect after the injury, it would create dissatisfaction and unnecessary economic waste —dissatisfaction in that when two men are similarly injured, one might sue at law and get either $10,000 or nothing, and the other elect compensation and get $1,000; waste in that in every instance the employer would have to procure all the evidence and prepare his defenses in anticipation of a suit, not knowing whether or not an action at law would be brought against him.

Section 8. Where liability for compensation under this act exists the same shall be as provided in the following schedule:

MEDICAL AND SURGICAL TREATMENT AND SUPPLIES.

(1) Such medical and surgical treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same; provided, however, that the total liability under this subdivision shall not exceed the sum of $100.00.

Note by board—This provision as to medical treatment is made for three reasons:

(1) As a rule, the employer is perhaps more competent to judge the efficiency of the doctor and to provide proper medical and surgical treatment than the injured man.

(2) It is to the interest of the employer to furnish the very best medical and surgical care to minimize the result of the injury, and to secure an early recovery.

(3) By so doing, he obtains a complete knowledge of the condition of the injured employé.

TIME OF COMPENSATION PAYMENTS.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employé leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

PAYMENT IN TOTAL DISABILITY.

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability; provided, that if the disability is such as not only to render the injured employé entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance shall be increased to one hundred per cent of the average weekly earnings.

PAYMENT IN PARTIAL DISABILITY.

(b) If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subsections (a) and (b) respectively.

Note by board—The object in providing for the payment in weekly installments is to furnish the compensation to the injured person at the same times that the family has been in the habit of receiving support and to insure the payment as needed. A deviation in this rule can be made in the case of death benefits, when the Industrial Accident Board is convinced that it is to the best interests of the parties to order that the amount be paid in a lump sum or otherwise.

The scale of compensation as here established divides the burden between the employer and the employé upon a basis of 65 and 35 per cent. of the loss accruing from the injury. Except that where disability is total and the injured employé is so helpless as to require the service of a nurse, it is increased during such period to 100 per cent.

It is urged that a compensation scheme should shift the entire burden upon the industry. This, however, is open to the following objections:

(1) To shift this entire burden to the employer before he has the opportunity to provide for it in the cost of production would not be fair to him;

(2) When the employé must bear a part of the burden there will not be a tendency to malinger.

One of the chief aims of compensation legislation is to provide something for every injury of more than a temporary character without unnecessarily burdening the industry. The maximum may seem insufficient in case of total disability or death, but, as to the employés as a whole, this is more than balanced by the certainty of some compensation for every serious injury.

(d) Said subsections (a), (b) and (c) shall be subject to the following limitations:

Aggregate disability indemnity for a single injury shall not exceed three times the average annual earnings of the employé.

If the period of disability does not last more than one week from the day the employé leaves work as the result of the accident no indemnity whatever shall be recoverable.

If the period of disability lasts more than one week from the day the employé leaves work as the result of the accident, no indemnity shall be recoverable for the first week of the period of such disability.

The aggregate disability period shall not, in any event extend beyond fifteen years from the date of the accident.

Note by board—(1) Aggregate liability for a single injury is limited to three times the average annual wage earnings. At law the recovery is unlimited, so that only by electing compensation can an employer know the maximum amount that he will be called upon to pay to compensate his employés for injuries sustained.

(2) No indemnity is allowed for the first week's disability. As medical and surgical treatment are furnished in all cases, it seems fair that in minor accidents not causing disability for more than a week and not inflicting serious hardship, no compensation should be allowed.

(3) The aggregate disability period is limited to fifteen years, even though the total amount paid during that time may not equal three times the annual wage earnings.

(3) The death of the injured employé shall not affect the obligation of the employer under subsections (1) and (2) of this section, so far as his liability shall have accrued and become payable at the time of the death, but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability benefits, provided that such death was approximately caused by the accident causing such disability:

Note by board—The purpose of compensation legislation is to provide compensation for the injured employé and for his dependents when his death results from accident. The theory being that if death results from any other cause, the industry is under no obligation to care for his dependents. The fact that the employé was receiving compensation at the time of his death does not give his dependents any additional right.

Where the accident does not cause immediate death, but is the proximate cause thereof within a period of fifteen years thereafter, the death benefits provided in this section are to be paid in lieu of all other liabilities. The liability of the employer can not, in any event, be greater than three times the annual wage earnings, and in case of death from this amount is to be deducted any payment previously made to the injured person as compensation.

(a) In case the deceased employé leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient when added to the benefits which shall, at the time of death, have accrued and become payable under the provisions of subsection (2) of this section to make the total compensation for the injury and death (exclusive of the benefit provided for in subsection (1), equal to three times his annual average earnings, not less than $1,000 nor more than

$5,000, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding in amount to the weekly earnings of the employé.

Note by board—The maximum limit is the same as for compensation. Where the accident does not immediately result in death, but was the proximate cause of death, the limit is the same; that is, the total amount paid as weekly indemnity and the death benefit together shall not exceed three times the annual earnings. Death benefits may be ordered paid in weekly installments, such as the dependents were accustomed to receive or in such other manner as may, in the discretion of the board, seem most beneficial to the dependents.

PERSONS PARTIALLY DEPENDENT.

(b) In case the deceased employé leaves no one wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employé as the annual amount devoted by the deceased to the support of the person or persons so partially dependent upon him for support bears to such average earnings, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding to the weekly earnings of the employé; provided, that the total compensation for the injury and death (exclusive of the benefit provided for in said subsection (1) shall not exceed three times such average annual earnings).

Note by board—When the deceased leaves no person wholly dependent, the death benefit is to be apportioned among those partially dependent in proportion to the aid or contribution made by the deceased to their support. In an action at law, the heirs would be entitled to full damages.

(c) In the event that the accident shall have approximately caused permanent disability, either total or partial, and the employé shall die within fifteen years after the date of the accident, liability for the death benefits provided for in said subsections (a) and (b) respectively

shall exist only where the accident was the approximate cause of death within said period of fifteen years.

(d) If the deceased employé leaves no person dependent upon him for support, and the accident approximately causes death, the death benefit shall consist of the reasonable expenses of his burial not exceeding $100.

Note by board—If death does not result within fifteen years the employer is not liable for any death benefit.

Section 9. (1) The weekly earning referred to in section (8) shall be one fifty-second of the average annual earnings of the employé; average annual earnings shall not be taken at less than $333.33, nor more than $1,666.66, and between said limits shall be arrived at as follows:

(a) If the injured employé has worked in such employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned as such employé during the days when so employed.

(b) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employé can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as having regard to the previous earnings of the injured employé,

and of other employés of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the average earning capacity of the injured employé at the time of the injury in the employment in which he was working at such time.

(d) The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude him from compensation for a later injury, or for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, and shall be arrived at according to the previous provisions of this section.

(2) The weekly loss in wages referred to in section 8, shall consist of the difference between the average weekly earnings of the injured employé, computed according to the provisions of this section, and the weekly amount which the injured employé, in the exercise of reasonable diligence, will probably be able to earn, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

Note by board—The foregoing sections provide the manner in which the wage earning shall be ascertained and compensation computed. Under ordinary circumstances there will be no dispute as to the wage paid. The compensation is to be computed with regard to the employé's earning power at the time of the accident.

(3) The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employé:

(a) A wife upon a husband.

(b) A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employé, and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided equally among them and persons partially dependent, if any, shall receive no part thereof, and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

(4) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the death of the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees.

Note by board—Certain persons above mentioned are conclusively presumed to be dependents. All other questions of dependency are to be determined as other questions of fact. In determining the question of dependency, the status is fixed as of the date of the death, not as of the date of the accident.

Section 10. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person in-

jured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer by delivering to and leaving with him a copy of such notice or by mailing to him by registered mail a copy thereof in a sealed and posted envelope addressed to him at his last known place of business or residence. Such mailing shall constitute complete service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days shall be equivalent to the notice herein required, and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collections of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby, and provided further that if no such notice is given and no payment of compensation made, within one year from the date of the accident, the right to compensation therefor shall be wholly barred.

Note by board—Notice of the injury must be in writing, and it must contain name and address of the person injured, time and place of the accident, and nature of the injury. It must be signed by the injured person, a dependent or some one in his behalf, and must be served "personally" upon the employer or sent to his last known address by registered mail, WITHIN THIRTY DAYS AFTER THE ACCIDENT.

Section 11. Wherever in case of injury the right to compensation under this act would exist in favor of any employé, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial accident board, or any member or examiner thereof. The employé shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the

employé, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

Note by board—The employé must permit physicians sent by the employer or by the Industrial Accident Board to examine him at any time after the accident. He may have his own physician there also, if he wishes. If he refuses to submit to such examination, his right to compensation shall be suspended or barred. The physician of the employer and of the employé may be required to testify as to the result of such examination.

Section 12. Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to a board consisting of three members, which shall be known as the industrial accident board. Within thirty days before this act shall take effect, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve three years, and another who shall serve four years. Thereafter such three members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same manner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all

the powers and authority of the board until such vacancy is filled. Each member of the board shall receive an annual salary of three thousand six hundred dollars.

Note by board—It is expected that the employer and the employé will attempt to settle their differences without recourse to the board, since the amount of compensation to be paid is fixed by the act, that in a large majority of cases such settlements will be effected.

If this fails, then the board will hold a hearing, and from the evidence produced relative to the facts connected with the accident, injury or wages, determine upon such award as seems just. It is the purpose of the board to afford quick relief at a minimum of expense to the litigants, and, therefore, the hearing will be had at the place of the accident or such other place as may be convenient for the parties.

One of the chief advantages in creating the board to administer the act is that by so doing uniformity of ruling is assured, which would not be the case were the act administered by individuals in various localities.

Section 13. The board shall organize by choosing one of its members as chairman. Subject to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required. It may also appoint a secretary and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed.

Note by board—The Industrial Accident Board organized by electing A. J. Pillsbury chairman, and appointing Aaron L. Sapiro, of San Francisco, secretary.

Whenever required to expedite matters, the board will appoint an examiner, with power to make a preliminary investigation, and to take such testimony as may be obtained. The rules adopted by the board immediately follow the annotations to the act.

OFFICE OF THE BOARD AND TRAVELING EXPENSES.

Section 14. The board shall keep its office at the city of San Francisco, and shall be provided by the secretary of state with a suitable room or rooms, necessary

office furniture, stationery, and other supplies. The member of the board and its assistants, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state the same as other general state expenses are audited and paid.

Note by board—The office of the board is located in Room 907, Royal Insurance building, Pine and Sansome streets, San Francisco.

Section 15. Upon the filing with the board by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation under this act, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing to be given to each party interested by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board, and hearings shall be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as shall be pertinent to the controversy before the board, but the board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be had, or the time books and pay roll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time, direct any employé claiming compensation to be examined by a regular physician; the testimony so taken

and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby shall have power and authority to issue subpoenas to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the superior court of any county, or city and county.

Note by board—This section relates to the procedure to be followed by the Industrial Accident Board, in determining controversies submitted to it.

The pleadings required will be simple, and only for the purpose of enabling each party and the board to understand the exact nature of the dispute in controversy.

Section 16. After final hearing by said board, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the party.

Section 17. Either party may present a certified copy of the award to the superior court for any county or city and county, whereupon said court shall, without notice, render a judgment in accordance therewith, which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with the like effect, be entered and docketed.

Section 18. The findings of fact made by the board acting within its powers, shall, in the absence of fraud, be conclusive, and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: within thirty days from the date of the award, any party aggrieved thereby may file with the board an application in writing for a review of such award, stating gen-

erally the grounds upon which such review is sought; within thirty days thereafter the board shall cause all documents and papers on file in the matter, and a transcript of all testimony which may have been taken therein, to be transmitted with their findings and award to the clerk of the superior court of that county or city and county wherein the accident occurred; such application for a review may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other, subject, however, to the provisions of law for a change of the place of trial or the calling of another judge. Upon such hearing the court may confirm or set aside such award, and any judgment which may theretofore have been rendered thereon, but the same shall be set aside only upon the following grounds:

(1) That the board acted without or in excess of its powers.

(2) That the award was procured by fraud.

(3) That the findings of fact by the board do not support the award.

Note by board—When an appeal is desired, it must be taken within thirty days from the date of the award. The review does not allow a trial by the Superior Court of the case presented to the Industrial Accident Board. The facts found by the board are conclusive, and the court in its review can only apply the law to the facts as found by the board, and can not set aside the award except upon the grounds stated in this section. The board will defend its findings and awards upon such review.

Section 19. Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board for further hearing or proceedings, or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and

transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties, or city and county.

Section 20. Any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the superior court; but all such appeals shall be placed on the calendar of the Supreme court and brought to a hearing in the same manner as criminal causes on such calendar.

Note by board—Any party may appeal from the judgment of the Superior Court sustaining or modifying the award, and such appeal goes directly to the Supreme Court of the state and is placed at the head of the calendar. This preference saves many months of delay and insures a speedy settlement of the controversy.

Section 21. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court.

Note by board—It is expected that the compensation provisions of the act will be administered practically without cost to the litigants.

Section 22. No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

Note by board—If the claim were assignable, the employé might be tempted to sell it for an inadequate sum of ready cash, thus defeating one of the purposes of compensation legislation.

The claim for the compensation that has accrued at the time of death of the injured employé survives, and his estate may collect this amount just as it may collect other debts due at the time of his death. The right of survival is in addition to the death benefits allowed the dependents.

Section 23. A claim for compensation for the injury or death of any employé, or any award or judgment entered thereon, shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employé shall be so preferred; but this section shall not impair the lien of any judgment entered upon any award.

Note by board—Claims to, or awards for, compensation have a preference over other debts of an employer to the same extent that claims for wages have, but this preference can not impair the lien of any judgment entered upon a previous award of compensation for injury.

Section 24. Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their families, dependents, or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contributions, or other benefit whatsoever due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company, which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery

against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employé, or to the person entitled to compensation shall be subject to the conditions of the insurance contract between them.

Note by board—The employer is primarily liable to the injured employé for the compensation provided by this act, regardless of any arrangement that the employer may make with a third person to carry this risk. The legislature, recognizing the necessity for an individual to guard against this risk, does not take away any right that he heretofore had to insure against this risk in mutual or other companies.

This section does not, however, authorize the formation of any insurance companies not already authorized by law.

Under this section, the employé is, in effect, made a party to the contract of insurance, and may enforce, in his own name, the liability of any insurance company which has insured against the compensation risk. Under the rules of the Industrial Accident Board, the employé may join the employer and insurance company in his application for relief.

The law recognizes the great benefits to employés of sick, accident, and death benefit societies, voluntarily put into operation by many large employers, and does not attempt to interfere with them.

The employé may, if he so desires, take out insurance at his own expense in his own name, and, in any such event, the benefit paid does not affect the right to compensation or diminish the amount thereof. To diminish the compensation in such instances would be just as unfair as it would be to increase the compensation when the employer is insured.

Section 25. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law.

Note by board—Under this section any contract of insurance against compensation is made subject to all the provisions of this act, including the rights and liabilities of the insurance company created under the preceding section.

Before any company can enter into a contract of insurance against the compensation risk, it must first be approved by the Insurance Commissioner, as provided by law. The purpose of this provision is to guard against the formation of companies not strong enough financially to carry the risk.

Section 26. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment of any assignable cause of action in tort which the employé or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

Note by board—Where the injury is caused by the negligence or wrongdoing of a third person, the injured workman has his choice of one of two remedies.

(1) He may proceed at law and maintain an action in tort to recover damages from the person whose fault is responsible for the accident, or

(2) He may elect the compensation provided by this act. In the event the injured employé elects compensation, the employer, who must pay the compensation, succeeds to the rights of the injured employé and may maintain an action at law in his own name to recover damages from the person directly responsible for the injury.

Section 27. The board shall cause to be printed and furnished free of charge to any employer or employé such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his withdrawal of such election, and the date of the filing thereof; and a book in which shall be recorded all awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon

the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employés, by posting and keeping continuously posted in a public and conspicuous place such notice thereof in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective, and the board shall cause notice to be given in like manner of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and withdrawals of election, and of the time of the filing of the same, shall conclusively be imputed to all employés.

Note by board—The Industrial Accident Board will provide all notices and forms and will furnish any information as to the act upon request. By their rules, appended hereto, the board calls attention to the formal requirements under the law. In order to facilitate and promote the efficient administration of the act, it is essential that the forms adopted by the board should be used whenever applicable.

Notices must be posted as indicated, but knowledge of withdrawal and election is imputed to employés, even should the notices not be posted and kept posted as directed.

Section 28. Nothing in this act contained shall be construed as impairing the right of parties interested, after the injury or death of an employé, to compromise and settle upon such terms as they may agree upon, any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the dependents of any injured employé any interest which he may not divert by such settlement or for which he or his estate shall, in the event of such settlement by him, be accountable to such dependents or any of them.

Note by board—Compromises and settlements between parties in interest, the employer and the injured employé or dependents, are permitted after the injury or death of an employé.

Section 29. The sum of fifty thousand dollars is

hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, to be used by the industrial accident board in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said industrial accident board for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

Section 30. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 264. Reports of industrial accidents.

Section 1. Every employer of labor in this state shall keep a full, true and correct record of every personal injury suffered by his or its employés, arising out of or in the course of the employment, and resulting in death, or in disability extending over a period of a week or more. Within fifteen days after the happening of any such personal injury, a written report thereof shall be mailed by the employer to the industrial accident board informally or on blanks to be provided by said board for this purpose. The said report shall contain the name of the employer, location of place of employment, nature of employment, name, address, age, nationality, sex and occupation of the injured person, length of time the injured person had worked at the particular employment previous to injury, date and hour of the day or night of the accident, the hour at which the injured employé began work on the date of the accident, nature of the injury, cause of the injury and rate of wages of the injured employé.

Sec. 2. Upon the termination of the disability of the injured employé or at the expiration of sixty days from the date of the accident, if the disability should extend beyond such period, the employer shall mail to the industrial accident board a supplemental report in relation to such disability, informally or on blanks to be provided by said board for this purpose. Such report must con-

tain complete statements as to any claim made by the injured employé for indemnification for the injury sustained, payment made to him or in his behalf for medical, surgical or other care, claim for compensation or damages made for such injuries and any compromise or settlement of claim for compensation or damages entered into between the employer and such injured employé, his heirs, dependents or legal representative. In the event that any payment shall be made to such injured employé, or his dependents at any time thereafter, in compromise or settlement of a claim for compensation or damages, the amount of such payment shall be forthwith reported by the employer to the industrial accident board.

Sec. 3. Every physician who attends any such injured employé shall keep a record of his case. Within ten days from the date of his first attendance upon the injured employé, he shall mail to the industrial accident board a report, informally or on blanks to be provided by the said board for this purpose. The said report shall contain the name and address of the employer, name, address, sex and age of the injured employé, date of accident, description of the injury, probable nature and extent of disability. Upon the termination of the disability of the injured employé or the termination of said physician's attendance upon his case, he shall forthwith mail to the industrial accident board a supplemental report in relation to such case describing the physical condition of the injured employé, his disability, convalescence or discharge from the doctor's care.

Sec. 4. Every person, firm, association or corporation insuring against the liability of employers for damages or compensation for personal injury to employés or indemnifying any employer for, or on account of any such liability shall keep a record thereof, and shall within the first five days of each and every month, report in writing to the industrial accident board, informally or on

blanks to be provided by said board for this purpose, every such injury to employés reported to it, every claim for damages or compensation for such injury filed with such person, firm, association or corporation and any settlement or compromise of any such claim for damages or compensation whether made with such injured employé, his heirs, dependents or legal representative.

Sec. 5. Every employer, physician or insurance company, firm or association, shall furnish to the industrial accident board all further information required by it in order to constitute a substantially complete and accurate history of each injury and the damages or compensation paid therefor.

Sec. 6. The record required to be kept in pursuance of the provisions of this act shall at all times be open to inspection of the industrial accident board or any member thereof, or any examiner appointed thereby. Any statement contained in such report shall not be admissible as evidence in any action arising out of the death or injury of any employé by reason of the accident reported.

Sec. 7. It shall be unlawful for any person, firm, corporation, agent or officer of a firm or corporation to fail, neglect or refuse to comply with any of the provisions of this act. Any person, firm, corporation, agent or officer of a firm or corporation that violates or omits to comply with any of the provisions of this act, shall be guilty of a misdemeanor for each and every offense and shall be, upon conviction thereof, punishable by fine of not less than ten dollars or more than one hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

Sec. 8. Nothing in this act shall apply to employers of labor engaged in farming, dairying, agricultural or horticultural pursuits, in poultry raising or domestic service.

§ 265. Rules of practice of the industrial accident board of California.

The following rules shall go into immediate effect under the provisions of Chapter 399, Laws 1911, and shall govern in any matter or proceeding relating to the administration of said act by the industrial accident board:

RULE I—PRELIMINARY.

Chapter 399, Laws 1911, may be cited as the "Employers' Liability Act," and these rules as the "Industrial Accident Board Rules." All words and phrases used in these rules shall have the same meaning as is given to the same words and phrases in sections 3 to 31 of the "Employers' Liability Act."[1]

RULE II—OFFICE OF INDUSTRIAL ACCIDENT BOARD.

The office of the Industrial Accident Board is hereby established at Room 907, Royal Insurance Building, Pine and Sansome streets, San Francisco. Such office shall be open during such hours as are fixed by law for the transaction of public business. The board may from time to time hold public session in such other places in the state as convenience may require.

RULE III—POSTING OF NOTICES.

Employers shall immediately post, and keep posted, all notices required to be posted by the Industrial Accident Board, in conspicuous places in their offices and works where such notices are most likely to be seen and read by their employés.

RULE IV—REPORTS.

Employers and physicians attending injured employés shall, within ten days after the happening of an accident causing a loss of industrial time lasting more than one week, make a full report thereof to the Industrial Accident Board. In any case where a compromise of liability for accident is made directly by the employer

[1] See § 263.

and employés, a full report of such compromise shall be immediately made by the employer to the Industrial Accident Board.

RULE V—PARTIES TO PROCEEDINGS.

When a controversy arises concerning any matter over which the Industrial Accident Board has jurisdiction, any party to the controversy may apply to the board for relief. The party making such application shall be known as the "applicant." All other persons necessary to enable the board effectively and completely to adjudicate upon and settle all questions involved shall be made parties to the application and shall be known as the "defendants."

An application on behalf of the dependents of a deceased workman for the settlement of a controversy may be made by the legal personal representatives (if any) of the deceased workman on behalf of such dependents or by the dependents themselves. All such dependents shall be joined in the application either as applicants or defendants.

An application for the settlement of a controversy respecting medical attendance or the burial expense of a workman who leaves no dependents shall be made by the legal representatives (if any) of the deceased workman. If there are no such personal representatives, the application may be made by any creditor to whom any such expenses are due, and all other such creditors known to the applicant must be joined as respondents. If the amount awarded is not sufficient for the payment of such expenses in full, it shall be divided in proportion to the respective amounts found to be due.

RULE VI—JOINDER OF PARTIES.

All persons may be joined as applicants in whom any right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist.

All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, and the board will of its own motion order that any additional party or parties be joined, when it deems their presence necessary.

RULE VII—PLEADINGS.

(1) Application. The applicant shall file a written application for relief with the Industrial Accident Board, containing the names of all parties, a general statement of the claim in controversy, the facts relating thereto and of the relief sought to be obtained. The board will thereupon fix a time and place for the hearing thereof, which shall not be more than forty (40) days after such filing and will serve a copy of such application, together with the notice of hearing, upon each adverse party. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and present such testimony as shall be pertinent to the controversy.

(2) Answer. When any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete or desires to bring any fact, paper or document to the attention of the board as a defense to the claim or otherwise, he must, within ten days after the service of the application, file with or mail to the board his answer, setting forth the particulars in which the application is inaccurate or incomplete and the facts upon which he intends to rely. A copy thereof must likewise be served upon each party to the proceedings. Any material allegation contained in the application and not controverted in the answer will be deemed to be admitted.

RULE VIII—SERVICE OF PLEADINGS.

Any pleading or document may be served either by delivering to and leaving with the person to be served, a

copy thereof, or by mailing to such person, by United States registered mail a copy thereof in a sealed envelope, with the postage thereon fully prepaid, addressed to such person at his last known place of business or residence.

Where a pleading or document is served by mail, it shall, unless the contrary be proved, be deemed to have been served, at the time when the letter containing the same would have been delivered in the ordinary course of post. Proof of such mailing shall be prima facie proof of service.

RULE IX—AWARDS.

An award may be rendered in favor of or against any one or more of the applicants or defendants, according to their respective rights and liabilities. In every award the compensation to be paid to each person shall be set forth separately.

RULE X—EXAMINER.

Whenever convenience may require, the Industrial Accident Board will appoint an examiner, whose duty it shall be to aid the board in making settlements between employers and employés, conduct investigations, take testimony, and to make report of any and all matters relating to the claim in controversy to the board. The board may at any time, and with or without notice to either party, cause testimony to be taken, or any other investigation to be made.

RULE XI—DEPOSITIONS.

Depositions may be taken before any notary public or other officer authorized to administer oaths, and, when so taken, used upon any hearing where the convenience of the witnesses requires. Such depositions shall be taken upon notice in the same manner as in courts of record.

RULE XII—STENOGRAPHIC REPORTER.

Either party may, upon payment of the costs attendant thereon, require that the testimony produced

at any hearing be taken down and transcribed by a shorthand reporter.

RULE XIII—AMENDMENTS.

The board, or any member thereof, may at any time, with or without notice, upon good cause shown, permit any amendment to any pleading or open up any default.

The board may amend or modify or vacate any order or award upon motion of either party or upon its own motion. The moving party shall serve upon all other parties to the proceeding a notice of such motion five days prior to the time when the same is to be heard, unless otherwise ordered by the board or a member thereof.

RULE XIV. EXTENSION OF TIME.

The board, or any member thereof, may, either with or without notice, grant extensions of time within which to comply with any rule upon good cause shown, and may likewise grant adjournments of hearings.

RULE XV. STIPULATIONS.

Parties to a controversy may stipulate the facts in writing, and the board may thereupon make its order or award based upon such stipulation.

RULE XVI. EXCEPTIONS.

At any hearing had before the board, or before any examiner appointed by it, a note shall be made of any question of law raised or exception taken and of the facts in evidence in relation thereto.

RULE XVII. APPEALS.

Any party aggrieved may, within thirty (30) days from the date of the award, file with the Industrial Accident Board an application, in writing, for a review of such award, stating generally the grounds upon which a review is sought, the points upon which he relies, and the facts in evidence relating thereto. A copy of such application shall at the same time be served by the ap-

pellant upon all adverse parties. The adverse party or parties may, within ten (10) days thereafter, file with the board an answer to such application for review, stating generally his objections, his points, and the facts in evidence in relation thereto. The board will thereupon prepare and certify a transcript of the testimony taken and transmit the same, together with all documents and papers on file in the matter, to the superior court.

It is hereby ordered that the foregoing rules be, and the same are, adopted as the rules governing the Industrial Accident Board, and for the regulation of practice, and that the same go into effect forthwith.

§ 266. The formal procedure under the act.—The blank forms which thus far have been devised by the Industrial Accident Commission of California in connection with their administration of that act[1a] are distributed naturally into the following groups: Group I, blank forms required to be used by employers; group II, blank forms required to be used by employés; group III, blank forms required to be used at hearings before the board; group IV, blank forms required to be used by physicians; group V, blank forms required to be used by casualty companies.

GROUP I.

§ 267. Forms to be used by employers.—The blank forms required to be used by employers covered by the act are entitled and designated as follows: (a) Employer's written acceptance of the provisions of Employers' Liability Act; (b) Employer's withdrawal of acceptance of Employers' Liability Act; (c) Notice that employer has accepted the compensation provisions of the Employers' Liability Act; (d) Employers' first report of accident to employé; (e) Form of employer's supplemental report of accident to employé, and set forth in the order named in the sections that immediately follow:

[1a] See §§ 12 to 20.

§ 268. Form of employers' written acceptance of the provisions of the act. (a)[2]

To the Industrial Accident Board of the State of California:

Please take notice that the undersigned, an employer of labor in the State of California hereby accepts the provisions of an act of the Legislature of the State of California, entitled, "An act relating to the liability of employers for injuries or death sustained by their employés, providing for compensation for the accidental injury of employés, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards," approved April 8, 1911.

Number of employés_____

Location of place of employment_____

Nature of employment_____

Dated at_____, Cal., this_____ day of_____, 19__

Signed: _____ (Seal)

_____

P. O. Address_____

City _____

The filing of the foregoing acceptance subjects the employer to the compensation provisions of said law for the term of one year from the date of filing and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of the term, file a written notice of the withdrawal of this acceptance in the office of the Industrial Accident Board (Employers' Liability Act, Section 5).

§ 269. Form of employer's withdrawal of acceptance of provisions of the act. (b)[3]

To the Industrial Accident Board of the State of California:

Please take notice that the undersigned, an employer of labor in the State of California, hereby withdraws_____election to be subject to the provisions of an act of the Legislature of the State of California, entitled, "An act relating to the liability of employers for injuries or death sustained by their employés, providing

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[2] This notice must be signed and dated by employer and filed with the Industrial Accident Board. If employer is a corporation, this notice must be signed by its proper officers thereunto duly authorized and the corporate seal affixed.

[3] This notice, to be effective for the next succeeding year, must be filed in the office of the Industrial Accident Board at least sixty days prior to the expiration of the first year from the date of filing the notice of acceptance, or sixty days prior to the expiration of any succeeding year (Employers' Liability Law, section 5).

for compensation for the accidental injury of employés, establishing an industrial accident board, making an appropriation therefor, defining its power and providing for a review of its awards," approved April 8, 1911.

Dated at_____, Cal., this_____ day of_____, 191__

Signed: _____ (Seal.)

_____

P. O. Address_____

City _____

§ 270. Form of notice that employer has accepted the compensation provisions of the act. (c)[4]

To all the employés in the State of California of

_____

You are hereby notified that your employer has this day filed with the Industrial Accident Board of the State of California, notice of acceptance of the provisions of Chapter 399, Laws of California, 1911 (commonly known as the "Employers' Liability Act").

You are further notified that you are subject to the compensation provisions of said act,

(1) Unless at the time of entering into your contract of hire, you serve notice in writing on your employer that you do not elect to be subject to such provisions, or

(2) If your contract of hire was made before the date hereof, unless within thirty days after the date hereof, you serve such written notice on your employer.

Dated at San Francisco, this_____day of_____, 191___.

INDUSTRIAL ACCIDENT BOARD OF CALIFORNIA.
A. J. PILLSBURY, Chairman,
WILL J. FRENCH,
WILLIS I. MORRISON.

§ 271. Form of employer's first report of accident to employé. (d)[4a]

Use this form for First Report only. A different form is provided for Supplemental Report.

Accidents which disable for less than seven calendar days need not be reported.

1. Employer.

a. Employer's name _____

[4] This notice shall be posted and continuously kept posted in a public and conspicuous place in the office, shop, or place of business of the above named employer. (Employers' Liability Act, Section 27.)

[4a] This report must be made within fifteen days after the happening of the accident. Answer all questions fully. Information given herein is confidential. Failure to report is a misdemeanor.

b. Main office: Street and No._____ City or town_____
c. Business _____
d. Location of plant, if not at main office address_____

2. Injured Employé.

a. Employé's name (in full)_____
b. P. O. address_____
c. Sex_____ d. Color_____ e. Age_____
f. Married, widower or single_____
g. Where born_____ h. Speak English?_____
i. If not, what language?_____
j. Occupation when injured (machinist, carpenter, laborer, etc.)____
_____
k. In what department or branch of work?_____
l. Was this regular occupation?_____
m. If not, state regular occupation_____
n. Length of experience in occupation when injured, here_____
_____; elsewhere_____
o. Piece or time worker?_____ p. Wage (or average earnings) per day_____ q. Working days per week_____

3. Accident.

a. Date_____ b. Hour of day_____ c. Place_____
d. At what hour did injured employé begin work on that day?_____
_____
e. Name of machine, tool or appliance in connection with which accident happened_____
f. By what kind of power driven?_____
g. Hand or mechanical feed_____
h. Part on which accident happened_____
_____
i. How guarded?_____
j. Describe in full how accident happened_____
_____
_____
_____
k. What would you suggest to prevent similar accidents?_____
_____

4. Injury.

a. Did injury result in death?_____
b. If so, give date of death_____
c. Name and P. O. address of relative or friend of deceased_____
_____
d. State exactly what part of person injured and extent of injury___
_____
_____
e. How much longer will injured person be unable to do his regular work? _____

5. Medical Care.

a. Name and address of present attending physician or hospital (if more than one, give each)_____

b. Furnished by employer or employé?_____

c. Physician or hospital for first aid, if other than the foregoing___

_____

6. Insurance.

a. Did you carry insurance against liability for this accident?_____

_____

b. If so, name of company_____

c. What kind of policy—employer's liability, collective, compensation, or other?_____

7. Remarks.

_____

_____

_____

Date of Report_____

Made out by_____

(If not member of firm, state position)_____

§ 272. Form of employer's supplemental report of accident to employé. (e)[4b]

Do not use this form for first report of accident. Another form is provided for that purpose.

Date of report_____ Furnished by_____ Position_____

Employer _____

(Name) (Address)

Employé _____

(Name) (Address)

Accident _____

(Date) (Place)

DISABILITY.

(1) If injured employé has died, date and place of death_____

(2) Nearest surviving relative_____

(Name) (Address)

(3) When did injured employé return to work_____

(4) If not returned, but recovered, when did disability end_____

(5) If still disabled, how much longer is disability expected to last

_____

[4b] Employers must fill in and mail this report to the Board, (1) in all cases upon termination of disability of injured employé; (2) if disability extends over more than sixty days from date of accident, then on the sixtieth day from date of accident, and again on termination of disability. The information contained in this report is confidential. Failure to report is a misdemeanor.

Payment in full settlement of claim, made at any time after filing of this report, must be forthwith reported to the Board.

(6) Present condition _____

(7) Physician now in attendance_____

(Name) (Address)

(8) Has injury resulted in—

(a) Permanent total disability (inability to do any work)____

_____

(Specify condition.)

(b) Permanent partial disability (ability to do some work but not same as before accident)_____

_____

(Specify condition.)

(c) What work can disabled employé do, and at what wage__

_____

(9) Additional remarks _____

RELIEF AND INDEMNITY.

(10) What payments have been made to injured employé, or on his behalf, since date of accident, on account of—

(a) Wages (exclusive of amount due at time of accident)_____

_____

(Period) (Total amount)

(b) Medical expenses and other care_____

(Specify)

(c) Additional indemnity _____

(Specify)

(11) To whom paid_____

(Name) (Address)

(12) Are payments scheduled above in full settlement of claim by injured employé _____

(13) If not, state amount and composition of claim_____

_____

(Specify fully)

_____

INSURANCE.

(14) Did you carry liability insurance at time of accident_____

(a)_____ (b)_____

(Name of company) (Kind of policy)

(15) What portion of above amount, if any, has been paid by insurance company?_____

(16) State fully what steps have been taken to settle claim_____

_____

_____

(17) Attach herewith copies of all agreements of settlement_____

(18) Additional remarks _____

_____

_____

GROUP II.

§ 273. Forms for employés.—The forms required to be used by the employés covered by the act are entitled and designated as follows: (f), Blank form of notice by employé of election not to be subject to the provisions of the Employers' Liability Act, (g), Blank form of notice to employer of claim for compensation for injury under Employers' Liability Law, and are set forth in the order named in the two succeeding sections.

§ 274. Form of notice by employé of election not to be subject to the provisions of the act. (f)[5]

To _____

(Write name of employer on above line.)

_____

(Write address of employer on above line.)

You will please take notice that the undersigned, now in, or being about to enter, your employ hereby elects not to be subject to the provisions of Chapter 399, Laws of California, 1911.

Dated at_____, Cal., this_____ day of_____, 191__.

Signed _____

P. O. address_____

City _____

§ 275. Form of notice to employer of claim for compensation for injury under act. (g)[6]

To_____(Write name of employer on this line.)

_____(Write address of employer on this line.)

You will take notice that the undersigned hereby makes claim

[5] If employer has elected to become subject to the compensation provisions of the act above referred to, then the employé comes under said provisions (1) unless at the time of entering into the employment, the employé gives the above notice, or (2) if the contract of hire was made before the date of the employer's election, unless within thirty (30) days after such election, the employé gives said notice (Employers' Liability Act, Section 7, Sub. 2).

[6] The foregoing notice must be filled out by the injured employé or some one in his behalf, or in case of his death, by a dependent or dependents or some one in their behalf, and served upon the employer by delivering a copy of the above notice to the employer personally, or by registered mail within THIRTY (30) DAYS after the occurrence of the accident for which compensation is claimed (Employers' Liability Act, Section 10).

for the compensation provided in Chapter 399, Laws of California, 1911, for injury received by_____ while in your employ.

Name of employé_____

Post office address_____

Relationship to claimant_____(State whether notice given by injured person, agent or dependent.)

The accident occurred on the_____day of_____, 191____, at_____, California.

The nature of the injury is as follows_____

_____

_____

_____

Dated at_____, Cal., this_____ day of _____, 191____.

Signature _____

P. O. address_____

City _____

Fill out in duplicate. Deliver personally or send one copy by registered mail to employer and mail other copy to the Industrial Accident Board of the State of California, Royal Insurance Building, San Francisco.

GROUP III.

§ 276. Forms for hearings before board.—The blank forms required to be used at hearings before the board are entitled and designated as follows: (h) Notice of filing of application for adjustment of claim by Industrial Accident Board; (i), Form of notice of hearing of application for adjustment of claim before the Industrial Accident Board; (j), Form of subpoena for witness to appear before the Industrial Accident Board, and are set forth in the order named in the three succeeding sections:

§ 277. Form of notice of filing of application for adjustment of claim. (h)

_____

_____

Applicant__,

vs.

_____

_____

Defendant___.

To the above-named defendant_____

_____

You are hereby notified that the application of_____

_____

entitled as above to adjust a claim for compensation arising out of {injuries sustained by ___ / the death of _____}_____

(a copy of which is attached hereto) has been filed in the office of the Industrial Accident Board of the State of California, 907 Royal Insurance Building, 201 Sansome Street, San Francisco, California.

In the event that you desire to make any answer to the said application your attention is called to the following rules adopted by this Board, relative to the same, to-wit:

"RULE VII—ANSWER. When any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete or desires to bring any fact, paper or document to the attention of the Board as a defense to the claim or otherwise, he must, within ten days after the service of the application, file with or mail to the Board his answer, setting forth the particulars in which the application is inaccurate or incomplete and the facts upon which he intends to rely. A copy thereof must likewise be served upon each party to the proceedings. Any material allegation contained in the application and not controverted in the answer will be deemed to be admitted."

"RULE VIII—SERVICE. Where a pleading or document is served by mail, it shall, unless the contrary be proved, be deemed to have been served, at the time when the letter containing the same would have been delivered in the ordinary course of post. Proof of such mailing shall be prima facie proof of service."

And you are further hereby notified that unless you appear and answer within ten days after the service on you of this notice, said Applicant__will apply to the Board for the relief prayed for.

Witness:

INDUSTRIAL ACCIDENT BOARD
Of the State of California,

this_____day of_____, 191__

_____

Member—Secretary.

STATE OF CALIFORNIA, }
City and County of_____} ss:

_____, being duly sworn, deposes and says: That he is, and was at the times of the service of the papers herein referred to, a citizen of the United States, over the age of eighteen years, and not a party to the within-entitled proceeding; that he personally served the within notice on the hereinafter-named defendants, by delivering to and leaving with each of said

defendants personally, in the City and County of_____, State of California, at the times set opposite their respective names a copy of said notice attached to a copy of the complaint referred to in said notice.

Names of Defendants Served:	Date of Service:
_____	_____
_____	_____
_____	_____

Subscribed and sworn to before me this_____ day of_____,A. D. 191__ _____

_____

INDUSTRIAL ACCIDENT BOARD
Of the State of California.

INDUSTRIAL ACCIDENT BOARD
Of the State of California, } ss:

I hereby certify that I served the foregoing notice on the_____ day of_____, A. D. 191__, on the defendant__ hereinafter named, by depositing a copy of said notice attached to a copy of the application therein mentioned, in the United States mail at_____

_____

California, with the postage thereon fully prepaid, and addressed to the said defendants, as follows, to-wit:

Name_____ Address_____
Name_____ Address_____
Name_____ Address_____
Dated_____, A. D., 191__

_____

INDUSTRIAL ACCIDENT BOARD
Of the State of California.

§ 278. Form of notice of hearing of application for adjustment of claim (i).[7]

Industrial Accident Board of the State of California.

_____
_____
Applicant__,
vs.
_____
_____
Defendant__.
Claim No. _____.

Notice of Hearing of Application for Adjustment of Claim.

[7] Either party shall have the right to be present at any hearing, in person or by attorney or other agent, and to present such testimony as may be pertinent. (Employers' Liability Act, Section 15, Chapter 399, Laws 1911.)

Application on file in the office of the Industrial Accident Board of the State of California, 907 Royal Insurance Building, 201 Sansome street, San Francisco.

The People of the State of California Send Greeting to:

----------, Defendant__.

You are hereby notified that the application of----------entitled as above, to adjust a claim for compensation arising out of (injuries sustained by the death of)----------has been set for hearing and will be heard at---------- on the ----------day of----------, 191__, at---------- o'clock_____M., and you are hereby further notified that in default of your attendance at the time and place above mentioned, the Industrial Accident Board of the State of California will proceed to hear and dispose of the said application in the manner provided by law.

Dated at San Francisco, California, this_____day of----------, 191__.

Witness: Industrial Accident Board of the State of California.

By----------, Member—Secretary.

Industrial Accident Board of the State of California, ss:

I hereby certify that I served the foregoing notice on the defendant__, hereinafter named, at the times set opposite their respective names, by depositing a copy of said notice in the United States mail on said day at----------, California, with the postage thereon fully prepaid, and addressed to the said defendant__, as follows, to-wit:

Date of Service.

Name ----------

Address ----------

Name ----------

Address ----------

Dated----------, A. D. 191__.

----------,

INDUSTRIAL ACCIDENT BOARD,

Of the State of California.

§ 279. Form of subpoena for witness to appear before industrial accident board. (j)

Industrial Accident Board of the State of California.

Applicant__,
vs.

Defendant__.
} Subpoena.

The People of the State of California Send Greeting to:

We command you, that all and singular, business and excuses

being laid aside, you appear and attend before the Industrial Accident Board of the State of California, at_____ on the _____day of_____, 191__, at_____o'clock_____M., then and there to testify in the above-entitled matter, now pending before said Industrial Accident Board, on the part of_____ and that you bring with you and then and there produce the following described documents, papers, books and records, to-wit:_____ _____and for a failure to attend you will be deemed guilty of a contempt and liable to pay to the parties aggrieved all losses and damages sustained thereby and forfeit one hundred dollars in addition thereto.

Witness: Industrial Accident Board of the State of California, this_____day of_____, A. D. 191__.

_____

Member—Examiner.

State of California, City and County of_____, ss:

_____, of said County, being duly sworn, says that he served the within subpoena, by showing the said within original to each of the following persons named therein, and delivered a true copy thereof to each of said persons, personally, at the time and place set opposite their respective names, to-wit:

Name.	Place.	Date.

Subscribed and sworn to before me this_____day of_____, 191__.

_____

Industrial Accident Board of the State of California.

(Certificate to be executed when subpœna served by a peace or other official.)

I hereby certify that I served the within subœna by showing the said within original to each of the following persons named therein, and delivered a true copy thereof to each of the said persons, personally, at the time and place set opposite their respective names, to-wit:

Name.	Place.	Date.

_____

(Title of Officer.)

_____

GROUP IV.

§ 280. Forms to be used by physicians.—The Board has prescribed certain forms for the reports of accidents and are designated and entitled as follows: (k) Form of physician's report of accident to employé; (l) Form of request for report of accident; (m) Form of request for fuller report of accident; (n) Form of notice to doctor to file report, and are set forth in the order named in the succeeding sections:

§ 281. Form of physician's report of accident to employé. (k)[8]

Accidents which disable for less than seven days need not be reported.

PART I.

To be filled in and sent to Board within ten days after first attendance.

1. Employer.

a. Employer's name _____
b. Address: Street and No._____ City or town_____
c. Business _____

2. Injured Employé.

a. Employé's name _____
b. Address: Street and No._____ City or town_____
c. Sex_____ d. Color_____ e. Age_____ f. Occupation_____
g. Speak English? _____
h. If not, what language?_____

3. Injury and First Aid.

a. Date of accident_____ b. Hour_____ c. Place_____
d. Did you give first treatment?_____ e. If so, when?_____
f. Where?_____ g. Were you called by employer or employé?_____ h. Where was employé sent?_____
i. Nature, location and extent of injury_____
_____
_____
j. How was injury caused?_____
_____

[8] Every physician who attends an employé injured by accident in the course of employment must report within ten days after first attendance, and again upon last attendance. Answer all questions as fully as possible. Information contained herein is confidential. Failure to report is a misdemeanor.

k. Any evidence of contributory cause other than accident?_____
l. If so, what?_____

4. Treatment.

a. If you did not give first treatment, give date of first attendance _____

b. Called by employer or employé?_____
c. Where was employé treated?_____ d. Treatment, surgical procedure, etc. _____

e. Will employé be able to resume regular occupation?_____
f. If so, approximately when?_____
Date of report_____ Made out by Dr._____
Street No._____ City or town_____

PART II.

This Part to be filled in and sent with Part I if the injured employé has then died, or been discharged, or the physician's attendance terminated from other cause. Otherwise detach Part II after writing in names for identification, and fill in and send to Board after last attendance.
Name of employer_____ Name of injured employé_____

1. Treatment.

a. Note operations and other material facts subsequent to those stated in Part I_____

b. Was patient confined to hospital?_____ c. Or home?_____
d. How long?_____ e. Professional nurse needed?_____
f. How long?_____ g. Was patient during treatment able to do any work?_____
h. What work and how much of the time?_____

2. Result.

a. Did injury result in death?_____
b. When? _____ c. Did it cause any permanent injury?_____ d. If so, state its nature exactly_____

e. When did you discharge patient?_____
f. If not discharged, when last attended?_____
g. Patient able to return to regular work?_____
h. When?_____
i. If unable to do regular work, able to do any other?_____
j. When? _____
Date of report_____ Made out by Dr._____

§ 282. Form of request for report of accident. (l)

The Industrial Accident Board is informed that an accident happened to_____ at _____on or about_____, in the course of his employment by you. If said employé was kept from work for a period of less than one week, simply so advise. If he lost one week or more, please make full report and state reasons for delay.

Kindly answer all pertinent questions on the blanks enclosed. If the employé has recovered, make both First and Supplemental Reports now. If he is still disabled, make First Report now, and Supplemental Report in conformity with the instructions printed on that form.

Very truly yours,

_____ Statistician.

§ 283. Form of request for fuller report of accident. (m)

The Industrial Accident Board acknowledges, with thanks, the receipt of your report of the accident to_____. Fuller information being required, you are requested to fill in the enclosed form and to return it promptly.

It is also called to your attention that reports are required of all industrial accidents, excepting only those causing disability of less than seven days, which have happened since January 1st of this year. If you have omitted to report any such accident, please report at once.

Additional report forms have been mailed to you under separate cover. If more are needed they will be sent on request.

Yours very truly,

INDUSTRIAL ACCIDENT BOARD,

By_____Statistician.

§ 284. Form of notice to doctor to file report (n).

Dear Doctor:

It is reported that you attended_____ injured in an accident on or about_____, 1912. Enclosed please find a copy of the statute relative to reporting industrial accidents, and a blank which we request you kindly to fill in and return.

No report is required if the injured person was incapacitated for less than one week. In that contingency, or if the report of your connection with the case is in error, may we request that you kindly so advise?

Your prompt attention will oblige,

Sincerely yours,

INDUSTRIAL ACCIDENT BOARD,

By_____

GROUP V.

§ 285. Forms to be used by casualty companies.—The forms required to be used by casualty companies as prescribed by the Industrial Accident Board of California are designated and entitled as follows: (o) First accident report of casualty company; (p) Supplemental accident report of casualty company, and are set forth in the order named in the sections that immediately follow:

§ 286. Form of first accident report of casualty company. (o)

(Give name of Company.)

Report only accidents causing disability of one week or more.

Date of report_____ Insurance Co.'s No._____

Furnished by_____ Position_____

Employer.

(1) Name _____

(Individual or firm name.)

(2) Address _____

(St. No.) (City or town.)

(3) Nature of business or industry_____

(4) Insurance classification _____

(5) Location of plant_____

(City or town.)

Employé.

(6) Name _____

(7) Address _____

(8) General occupation of person injured_____

(Machinist, Laborer, etc.)

Accident.

(9) Date_____ (10) Place_____

(11) Full description of accident, and cause thereof_____

Injury.

(12) Was accident fatal_____ (13) If fatal, date of death_____

(14) Nature of injury_____

---

(15) Probable period of disability_____

(Report in days.)

Additional Data.

---

§ 287. Form of supplemental accident report of casualty company. (p)

(Give name of Company.)

Date of Report_____ Insurance Co.'s No._____

Furnished by_____ Position_____

Employer.

(1) Name _____

(2) Address _____

Employé.

(3) Name _____

(4) Address _____

Accident.

(5) Date_____ (6) Place_____

(7) Date of first report by Company to Board_____

Claim for Indemnity.

(8) Date filed with Co. _____ (9) Amount claimed_____

(10) Composition of claim_____

(Specify fully medical expenses, indemnification for wages, damages, death benefits.)

---

(11) State kind of policy_____

(Collective, compensation, liability.)

Adjustment of Claim.

(12) Has claim been adjusted_____

(13) If not, grounds of resistance_____

(14) Date suit filed_____

(15) Date of adjustment_____ (16) Amount_____

(17) In lump sum or installments_____

(If installments, specify.)

(18) Paid to _____

(19) Whose address is_____

(20) Was claim adjusted prior to termination of disability_____

(21) If so, probable period of disability from date of adjustment____

Additional Data.

CHAPTER XV.

THE NEVADA WORKMEN'S COMPENSATION ACT.

Sec.
288. Nature and scope of the act.
289. Procedure—Boards of arbitration.
290. Text of the Nevada Workmen's compensation law.

§ 288. Nature and scope of act.—The law of this state covers nine extra hazardous employments. It abolishes the defense of fellow servant and assumed risk and substitutes the rule of comparative negligence for the old rule of contributory negligence. The employers are made directly liable for the compensation and medical and surgical aid. The scheme of administration provides for local boards of arbitration whose actions are subject to review by the courts. Benefits in death cases are three years' earnings with a minimum of $2,000 and a maximum of $3,000; and in case there are no dependents, $300. The compensation paid in case of partial and total disability begins ten days after the accident happened and continues so long as the disability lasts and is at the rate of 60 per cent. of the impairment of the injured worker's earning capacity, but in no case shall the compensation exceed $3,000. Medical and surgical aid are paid for by the employer only in case an employé dies of an injury covered by the act and without dependents.

§ 289. Procedure—Boards of arbitration.—The act does not provide for a board of administration. The law is presumed to work automatically. There is no formal procedure prescribed in the act, but the act does provide for the formation of local boards of arbitration by

this act applies, whether by way of manual labor or otherwise, and where his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom compensation is payable. "Dependents" means wife, father, mother, husband, sister, brother, child or grandchild; provided, that they were wholly or partly dependent upon the earnings of the workman at the time of his death.

Sec. 3. This act shall apply to workmen engaged in manual or mechanical labor in the following employments within this state, each of which is hereby determined to be especially dangerous, in which from the nature, condition or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessarily or substantially unavoidable, and to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

(a) The erection or demolition of any bridge or building in which there is, or in which the plans or specifications require iron or steel framework;

(b) The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of material in connection with the erection or demolition of such bridge or building;

(c) Work on scaffolds of any kind elevated twenty feet or more above the ground, water or floor beneath, in the erection, construction, painting, alteration or repair of buildings, bridges or structures;

(d) Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents;

the employer and employé injured or by party interested in a claim on account of an injury covered by the law.

§ 290. Text of the Nevada workmen's compensation law.—The Nevada law became effective July 1, 1911, and provides:

Section 1. If in any employment to which this act applies personal injury disabling a workman from his regular service for more than ten days, or death by accident, arising out of and in the course of employment is caused to a workman, the workman so injured, or in case of death, the member of his family, as hereinafter defined, shall be entitled to receive from his employer, and the said employer shall be liable to pay, the compensation provided for in this act; provided, that recovery hereunder shall not be barred where such employé may have been guilty of contributory negligence where such contributory negligence is slight and that of the employer is gross in comparison, but in which event the compensation may be diminished in proportion to the amount of negligence attributable to such employé, and it shall be conclusively presumed that such employé was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employés contributed to such employé's injury; and it shall not be a defense: (1) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (2) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow-servant. No contract, rule or regulation shall exempt the employer from any of the provisions of the preceding section of this act.

Sec. 2. "Employer" includes any body of persons corporate or incorporate and the legal personal representative of a deceased employer. "Workman" includes every person who is engaged in an employment to which

this act applies, whether by way of manual labor or otherwise, and where his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom compensation is payable. "Dependents" means wife, father, mother, husband, sister, brother, child or grandchild; provided, that they were wholly or partly dependent upon the earnings of the workman at the time of his death.

Sec. 3. This act shall apply to workmen engaged in manual or mechanical labor in the following employments within this state, each of which is hereby determined to be especially dangerous, in which from the nature, condition or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessarily or substantially unavoidable, and to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

(a) The erection or demolition of any bridge or building in which there is, or in which the plans or specifications require iron or steel framework;

(b) The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of material in connection with the erection or demolition of such bridge or building;

(c) Work on scaffolds of any kind elevated twenty feet or more above the ground, water or floor beneath, in the erection, construction, painting, alteration or repair of buildings, bridges or structures;

(d) Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents;

(e) The operation on railroads of locomotives, engines, trains, motors or cars propelled by gravity, steam, electricity or other mechanical power, or the construction or repairs of railroad tracks and roadbeds over which such locomotives, engines, trains, motors, or cars are operated;

(f) Construction, operation, alteration, or repairs of locomotives, engines, trains, motors or cars in or about the shops, round-houses, or other places, where the same is done;

(g) Construction, operation, alteration or repairs to mills, smelters or mines, including every shaft or pit in the course of being sunk, and every crosscut, drift, station, winze, level or inclined planes through which workmen pass to and from work, and all works, machinery, tramways, ladders or passages, both below ground and above ground, in and adjacent to any mine;

(h) All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry;

(i) The construction of tunnels.

The employers to whom this act shall apply shall be any person or persons, association, partnership or corporation carrying on any such industry as aforesaid.

Sec. 4. Notice of accidents must be given to the employer as soon as practicable after the happening thereof, and the claim for compensation with respect to such accident within six months from the occurrence of such accident causing the injury, or in case of death, within six months from the time of death; provided, always, that the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defense by the want, defect or inaccuracy, and that such want, defect or inaccuracy was occasioned by

mistake or other reasonable cause. Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, if known, the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers. The notice may be served by delivering the same to or at the residence or place of business of the person upon whom it is to be served, or the notice may also be served by post, by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered. Where the employer is a body of persons, natural or artificial, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

Sec. 5. The amount of compensation in case death results from injury, or for death accruing within five years as a result of injury, shall be:

(a) If the workman leave any person or persons who at the time of the accident were wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of two thousand dollars, whichever of these sums is the greater, but not exceeding in any case three thousand dollars; provided, that the total sum of any weekly payments made under this act shall be deducted from such sum; and if the period of the workman's employment by the same employer has been less than the said three years,

then the amount of his earnings during the said three years shall be deemed to be nine hundred and thirty-six times his average daily earnings during the period of his actual employment under the same employer;

(b) If the workman leave only person or persons who at the time of the accident were partly dependent upon his earnings, a sum equal to 50 per cent of the amount payable under the foregoing provisions of this section;

(c) If the workman leave no person at the time of the accident who was dependent upon his earnings, the reasonable expenses of his medical attendance and burial, not exceeding in all three hundred dollars.

Whatever sum is payable under this section in case of death of the injured workman shall be paid to his legal representatives for the benefit of such dependents, and if he leaves no such dependents, then to the public administrator, for the benefit of the person or persons to whom the expenses of medical attendance and burial are due.

Sec. 6. The amount of compensation in case of total or partial disability resulting from injury shall be:

(a) A weekly payment during the disability beginning within ten days after the injury, 60 per cent of his average weekly earnings in such employment during the previous twelve months if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, so long as there is complete disability; and that proportion of the said percentage which the depleted earning capacity for that service bears to the total disability when the injury is only partial, but in no event shall the total of all payments under this act exceed the sum of three thousand dollars;

(b) In addition to the foregoing payments, if the injured person lose both feet or both hands, or one foot and one hand, or both eyes or one eye and one foot or one hand, he shall receive, during a full period of five

years, 40 per cent of his average weekly earnings, or if he lose one foot, one hand or one eye, the additional compensation therefor shall be 15 per cent of his average weekly earnings, the amount of such earnings to be computed in the same manner as the foregoing 60 per cent; provided, that in no case shall all the payments received herein exceed in any month the whole wages earned when the injury occurs, nor shall the added percentages continue longer than to make all payments aggregate three thousand dollars.

Sec. 7. Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. A copy of the report of the examining physician shall be furnished to the workman. If a dispute then exists as to the workman's condition or amount of weekly compensation such dispute shall be determined by arbitration under this act, or by judicial procedure as hereinafter provided; provided, also, that any and all disputes arising under this act may be first submitted to a board of arbitration, and in case of failure to settle it, resort may be had to courts of justice.

Sec. 8. Arbitration proceedings shall be as follows: The employer and the workman may each choose one arbitrator, the two arbitrators thus chosen shall choose a third, and the three arbitrators shall hear the facts of the dispute within three months after having been chosen, and within two weeks thereafter, render a decision, which, if unanimous, shall be final and binding on both parties.

Sec. 9. On failure of the board of arbitration to reach an adjustment of the dispute above referred to, either party may apply to a court of competent jurisdiction, and have an adjudication as in any other contro-

versy. And the findings and judgment of the court shall be conclusive on all parties concerned. Said courts may compel the attendance of witnesses and the production of evidence, as in all other cases provided for by law, and the judgment of said court may continue and diminish or increase the weekly payments, subject to the maximum provided in this act. The prevailing party in any action, brought under the provisions of this act, shall be entitled to his costs of suit and reasonable attorney's fees; provided, that nothing in this act shall operate to defeat the constitutional right of appeal.

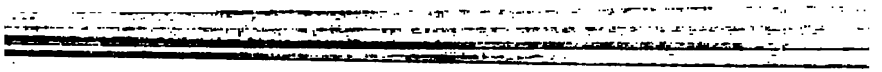
Sec. 10. If any employer who shall be the principal, enters into a contract with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, the said principal shall be liable to pay to any workman employed in the execution of the work, any compensation under this act, which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, then reference to the principal shall be substituted for reference to the employer, except the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor or employer by whom he is immediately employed. Where such principal is liable to pay compensation he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section. Nothing in this section shall be construed as preventing a workman from recovering compensation under this act, from the contractor or subcontractor, instead of the principal; nor shall this section apply in any case where the accident shall occur elsewhere than on or in or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

Sec. 11. Nothing in this act contained shall be held or deemed to require any workman or his personal representatives to proceed under its terms and provisions for the recovery of compensation of damages for death or accidental injury. But if the workman or his personal representatives shall so elect, he or they may disregard the provisions of this act and may pursue any other remedy at law for the recovery of such compensation of damages for or on account of such death or injury. The right of election or choice of remedies shall be exercised solely by such workman or his representatives.

Sec. 12. A claim for compensation for the injury or death of any employé or any reward or judgment entered thereon shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employé shall be so preferred, but this section shall not impair the lien of any judgment entered upon any award.

Sec. 13. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment of any assignable cause of action in tort which the employé or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

Sec. 14. Nothing in this act contained shall be construed as impairing the right of parties interested after the injury or death of an employé to compromise or settle upon such terms as they may agree upon any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the defendants of any injured employé any interest which he may not divert by such settlement or for which he or his estate shall in the event of such settlement by him be accountable to such dependents or any of them.



CHAPTER XVI.

THE KANSAS WORKMEN'S COMPENSATION ACT.

Sec.
291. Nature and scope of the act.
292. Text of the Kansas compensation act.
293. Formal procedure under the act.
294. Form of election of employer to come within the provisions of the act.

§ 291. Nature and scope of the act.—The Kansas act is applicable to certain specified hazardous employments within the state and is without application to employés engaged in interstate commerce. The act is not compulsory, but its acceptance is optional with the employer and employé. Where the act is accepted by the employer a non-electing employé must serve notice on his employer of his refusal to be bound by the act. A non-electing employer is denied the common-law defense of fellow servant and assumption of risk and may only avail himself of the doctrine of comparative negligence. Where an employer who has elected to be bound by the act is sued by a non-electing employé, the employer may avail himself of the common-law defenses and the doctrine of comparative negligence unless the injury was caused by the wilful or gross negligence of such employer, or of any managing officer, or managing agent of said employer, or where under the law existing at the time of the death or injury such defenses are not available. The employer is not liable for injuries which do not disable the employé for more than two weeks from earning full wages at his employment, nor is he liable where the injury results from the deliberate intention of the employé to cause the injury, or is due to his failure to observe statutory regu-

lations provided for his safety or the injury results from his intoxication. The compensation is computed on the basis of fifty per cent of the impairment of the working power of the employé. Provision is made for arbitration in adjusting compensation and for the filing, cancellation, review and modification of awards; for the entry of judgments and stay of proceedings upon awards, and for the redemption of liability. The act is complicated and can not be satisfactorily discussed until the authorities administering the same have developed the construction of the law and a procedure thereunder.

§ 292. Text of the Kansas compensation act.—The statute is entitled an act to provide compensation for workmen injured in certain hazardous industries. It became effective January 1, 1912, and provides:

Section 1. The obligation.—If in any employment to which this act applies, personal injury by accident arising out of and in the course of employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation to the workman in accordance with this act. Save as herein provided, no such employer shall be liable for any injury for which compensation is recoverable under this act; provided, that (a) the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he is employed; (b) if it is proved that the injury to the workman results from his deliberate intention to cause such injury, or from his wilful failure to use a guard or protection against accident required pursuant to any statute and provided for him, or a reasonable and proper guard and protection voluntarily furnished him by said employer, or solely from his deliberate breach of statutory regulations affecting safety of life or limb, or from his intoxication, any compensation in respect to that injury shall be disallowed.

Sec. 2. Reservation of liability for wrong or negligence in certain cases.—Where the injury was proximately caused by the individual negligence, either of commission or omission, of the employer, including such negligence of the directors or of any managing officer or managing agent of such employer if a corporation, or of any of the partners if such employer is a partnership, or of any member if such employer is an association, but excluding the negligence of competent employés in the performance of their duties or of the employer's duty delegated to them, the existing liability of the employer shall not be affected by this act, but in such case the injured workman, or if death results from such injury, his dependents as herein defined, if they unanimously agree, otherwise his legal representatives, may elect between any right of action against the employer upon such liability and the right to compensation under this act.

Sec. 3. Reservation of penalties.—Nothing in this act shall affect the liability of the employer or employé to a fine or penalty under any other statute.

Sec. 4. Subcontracting.—(a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of his trade or business or which he has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall

be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. (b) Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of this section, and shall have a cause of action therefor. (c) Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from the contractor instead of the principal. (d) This section shall not apply to any case where the accident occurred elsewhere than on or in, or about the premises on which the principal has undertaken to execute work or which are otherwise under his control or management, or on, in, or about the execution of such work under his control or management. (e) A principal contractor, when sued by a workman of a subcontractor, shall have the right to implead the subcontractor. (f) The principal contractor who pays compensation voluntarily to a workman of a subcontractor shall have the right to recover over against the subcontractor.

Sec. 5. Remedies both against employer and stranger.—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability against some person other than the employer to pay damages in respect thereof. (a) The workman may take proceedings against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and (b) If the workman has recovered compensation under this act, the person by whom the compensation was paid, or any person who has been called on to indemnify him under the section of this act relating to subcontracting, shall be entitled to indemnity from the person so liable to pay damages as

aforesaid, and shall be subrogated to the rights of the workman to recover damages therefor.

Sec. 6. Application of the act.—This act shall apply only to employment in the course of the employer's trade or business on, in, or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments is hereby determined to be especially dangerous, in which from the nature, condition or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen. This act shall not apply in any case where the accident occurred before this act takes effect, and all rights which have accrued, by reason of any such accident, at the time of the publication of this act, shall be saved the remedies now existing therefor, and the court shall have the same power as to them as if this act had not been enacted.

Sec. 7. This act shall not be construed to apply to business or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged.

Sec. 8. It is hereby determined that the necessity for this law and the reason for its enactment, exist only with regard to employers who employ a considerable number of persons. This act, therefore, shall only apply to employers by whom fifteen or more workmen have been [employed] continuously for more than one month at the time of the accident and who have elected or shall elect before the accident to come within the provision

hereof; provided, however, that employers having less than fifteen workmen may elect to come within the provisions of this act in which case his employés shall be included herein, as hereinafter provided.

Sec. 9. Definitions.—In this act, unless the context otherwise requires. (a) "Railway" includes street railways and interurbans; and "employment on railways" includes work in depots, power houses, round-houses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars and trains, and to employés of express companies while running on railroad trains. (b) "Factory" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brick yard, meat-packing house, foundry, smelter, oil refinery, lime burning plant, steam heating plant, electric lighting plant, electric power plant and water power plant, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or repair shop, salt plant, and chemical manufacturing plant. (c) "Mine" means any opening in the earth for the purpose of extracting any minerals, and all underground workings, slopes, shafts, galleries and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven; and includes all the appurtenant structures at or about the openings of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment. (d) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain, or of the employer's trade or business. (e) "Electrical work" means any kind of work in or directly connected with the construction, installation,

operation, alteration, removal or repair of wires, cables, switchboards or apparatus, used for the transmission of electrical current. (f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenance. (g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined) bridge, jetty, dike, dam, reservoir, underground conduit, sewer, oil or gas well, oil tank, gas tank, water tower, or water works (including standpipes or mains), any caisson work or work in artificially compressed air, any work in dredging, pile driving, moving buildings, moving safes, or in laying, repairing or removing, underground pipes and connections, the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery, (including belting and other connections) and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives is in use (excluding mining and quarrying). (h) "Employer" includes any person or body of persons corporate or unincorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership. (i) "Workman" means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, but does not include a person who is employed otherwise than for the purpose of the employer's trade or business. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents, as hereinafter defined, or to his legal representative, or where he is a minor or incompetent, to his guardian. (j) "Dependents" means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. And "members of a family" for the pur-

poses of this act means only widow or husband, as the case may be, and children; or if no widow, husband or children, then parents and grandparents, or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section parents include step-parents, children include step-children, and grandchildren include step-grandchildren, and brothers and sisters include step-brothers and step-sisters, and children and parents include that relation by legal adoption.

Sec. 10. Incompetency of workman.—In case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents as herein defined is mentally incompetent or a minor, at the time when any right, privilege or election accrues to him under this act, his guardian may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no guardian.

Sec. 11. Amount of compensation.—The amount of compensation under this act shall be, (a) Where death results from injury: (1) If the workman leaves any dependents wholly dependent upon his earnings, an amount equal to three times his earnings for the preceding year but not exceeding thirty-six hundred dollars and not less than twelve hundred dollars, provided, such earnings shall be computed upon the basis of the scale which he received or would have been entitled to receive had he been at work, during the thirty days next preceding the accident; and, if the period of the workmen's employment by the said employer had been less than one year, then the amount of his earnings during the said year shall be deemed to be fifty-two times his average weekly earnings during the period of his actual employment under said employer; provided, that the amount of any payments made under this act and

any lump sum paid hereunder for such injury from which death may thereafter result shall be deducted from such sum; and provided, however, that if the workman does not leave any dependents, citizens of and residing at the time of the accident in the United States or the Dominion of Canada, the amount of compensation shall not exceed in any case seven hundred and fifty dollars. (2) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such proportion of the amount payable under the foregoing provisions of this section, as may be agreed upon or determined to be proportionate to the injury to the said dependents; and (3) if he leaves no dependents, the reasonable expense of his medical attendance and burial, not exceeding one hundred dollars. (b) Where total incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, equal to fifty per cent of his average weekly earnings computed as provided in section 12, but in no case less than six dollars per week or more than fifteen dollars per week. (c) When partial incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, shall not be less than twenty-five per cent, nor exceed fifty per cent, based upon the average weekly earnings computed as provided in section 12, but in no case less than three dollars per week or more than twelve dollars per week; provided, however, that if the workman is under twenty-one years of age at the date of the accident and the average weekly earnings are less than $10.00 his compensation shall not be less than seventy-five per cent of his average earnings. No such payment for total or partial disability shall extend over a period exceeding ten years.

Sec. 12. Rule for compensation.—For the purposes of the provisions of this act relating to "earnings" and "average earnings" of a workman, the following rules

shall be observed: (a) "Average earnings" shall be computed in such manner as is best calculated to give the average rate per week at which the workman was being remunerated for the 52 weeks prior to the accident. Provided, that where by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature or the terms of the employment, it is impracticable to compute the rate of remuneration, regard shall be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person employed, by a person in the same grade employed in the same class of employment and in the same district. (b) Where the workman had entered into concurrent contract of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his "earnings" and his "average earnings" shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident. (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by his absence of work due to illness or any other unavoidable cause. (d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed upon him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings. (e) In fixing the amount of the payment, allowance shall be made for any payment or benefit which the workman may receive from the employer during his period of incapacity. (f) In the case of partial incapacity the payments shall be computed to equal, as closely as possible, fifty per cent of the difference between the amount of the "average

earnings" of the workman before the accident, to be computed as herein provided, and the average amount which he is most probably able to earn in some suitable employment or business after the accident, subject however, to the limitations hereinbefore provided.

Sec. 13. Payments to the injured workman.—The payments shall be made at the same time, place and in the same manner as the wages of the workman were payable at the time of the accident, but a judge of any district court having jurisdiction upon the application of either party may modify such regulation in a particular case as to him may seem just.

Sec. 14. Compensation to dependents, etc.—Where death results from the injury and the dependents of the deceased workman as herein defined, have agreed to accept compensation, and the amount of such compensation and the apportionment thereof between them has been agreed to or otherwise determined, the employer may pay such compensation to them accordingly (or to an administrator if one be appointed) and thereupon be discharged from all further liability for the injury. Where only the apportionment of the agreed compensation between the dependents is not agreed to, the employer may pay the amount into any district court having jurisdiction, or to the administrator of the deceased workman, with the same effect. Where the compensation has been so paid into court or to an administrator, the proper court, upon the petition of such administrator or any of such dependents, and upon such notice and proof as it may order shall determine the distribution thereof among such dependents. Where there are no dependents, medical and funeral expenses may be paid and distributed in like manner.

Sec. 15. The payments due under this act, as well as any judgment obtained thereunder, shall not be assignable or subject to levy, execution or attachment, except for medicine, medical attention and nursing and

no claim of any attorney at law for service rendered in securing such indemnity or compensation or judgment shall be an enforceable lien thereon, unless the same has been approved in writing by the judge of the court where said case was tried; but if no trial was had, then by any judge of the district court of this state to whom such matter has been regularly submitted, on due notice to the party or parties in interest of such submission.

Sec. 16. Reports as to accidents and compensation. —Employers affected by this act shall report annually to the state commissioner and factory inspector such reasonable particulars in regard thereto as he may require, including particulars as to all releases of liability under this act and any other law. The penalty for failure to report or for false report shall invalidate any such release of liability.

Sec. 17. Medical examination.—(a) After an injury to the employé, if so requested by his employer, the employé must submit himself for examination at some reasonable time to a reputable physician selected by the employer, and from time to time thereafter during the pendency of his claim for compensation, or during the receipt by him for payment, under this act, but he shall not be required to so submit himself, more than once in two weeks unless in accordance with such orders as may be made by the proper court or judge thereof. Either party may upon demand require a report of any examination made by the physician of the other party upon payment of a fee of one dollar therefor. (b) If the employés request he shall be entitled to have a physician of his own selection present at the time to participate in such examinations. (c) Unless there has been a reasonable opportunity thereafter for such physician selected by the employé to participate in the examination in the presence of the physician selected by the employer, the physician selected by the employer shall not be permitted afterwards to give evidence of the condition of

the employé in a dispute as to the injury. (d) Except as provided herein in this act there shall be no other disqualification or privilege preventing the testimony of a physician who actually makes an examination.

Sec. 18. Medical examination by neutral physician. —In case of a dispute as to the injury, the committee, or arbitrator as hereinafter provided, or the judge of the district court shall have the power to employ a neutral physician of good standing and ability, whose duty it shall be, at the expense of the parties, to make an examination of the injured person, as the court may direct, on the petition of either or both the employer and employé or dependents.

Sec. 19. Testimony by court physician.—If the employer or the employé has a physician make such an examination and no reasonable opportunity is given to the other party to have his physician make examination, then, in case of a dispute as to the injury, the physician of the party making such examination shall not give evidence before the court unless a neutral physician either has examined or then does examine the injured employé and give testimony regarding the injuries.

Sec. 20. Refusal of medical examination.—If the employé shall refuse examination by physician selected by the employer, with the presence of a physician of his own selection, and shall refuse an examination by the physician appointed by the court, he shall have no right to compensation during the period from refusal until he, or someone in his behalf, notifies the employer or the court that he is willing to have such examination.

Sec. 21. Certificate of physician.—A physician making an examination shall give to the employer and to the workman a certificate as to the condition of the workman, but such certificate shall not be competent evidence of that condition unless supported by his testimony if his testimony would have been admissible.

Sec. 22. Notice and claim.—Proceedings for the

recovery of compensation under this act shall not be maintainable unless written notice of the accident, stating the time, place, and particulars thereof, and the name and address of the person injured, has been given within ten days after the accident, and unless a claim for compensation has been made within six months after the accident, or in case of death, within six months from the date thereof. Such notice shall be delivered by registered mail, or by delivery to the employer. The want of, or any defect in such notice, or in its service, shall not be a bar unless the employer proves that he has, in fact, been thereby prejudiced, or if such want or defect was occasioned by mistake, physical or mental incapacity or other reasonable cause, and the failure to make a claim within the period above specified shall not be a bar, if such failure was occasioned by a mistake, physical or mental incapacity or other reasonable cause.

Sec. 23. Agreements.—Compensation due under this act may be settled by agreement. Every such agreement, other than a release, shall be in the form hereinafter provided.

Sec. 24. Arbitrations.—If compensation be not so settled by agreement: (a) If any committee representative of the employer and the workman exists, organized for the purpose of settling disputes under this act, the matter shall, unless either party objects by notice in writing delivered or sent by registered mail to the other party before the committee meets to consider the matter, be settled in accordance with its rules by such committee or by an arbitrator selected by it. (b) If either party so objects, or there is no such committee, or the committee or the arbitrator to whom it refers the matter fails to settle it within sixty days from the date of the claim, the matter may be settled by a single arbitrator agreed on by the parties, or appointed by any judge of a court where an action might be maintained. The consent to arbitration shall be in writing and signed by the

parties and may limit the fees of the arbitrator and the time within which the award must be made. And unless such consent and the order of appointment expressly refers other questions, only the question of the amount of compensation shall be deemed to be in issue.

Sec. 25. The duties of arbitrator.—The arbitrator shall not be bound by technical rules of procedure or evidence, but shall give the parties reasonable opportunity to be heard and act reasonably and without partiality. He shall make and file his award, with the consent to arbitration attached in the office of the clerk of the proper district court within the time limited in the consent, or if no time limit is fixed therein, within sixty days after his selection, and shall give notice of such filing to the parties by mail.

Sec. 26. Arbitrator's fees.—The arbitrator's fees shall be fixed by the consent to arbitration or be agreed to by the parties before the arbitration, and if not so fixed or agreed to, they shall not exceed $10.00 per day, for not to exceed ten days, and disbursements for expense. The arbitrator shall tax or apportion the costs of such fees in his discretion and shall add the amount taxed or apportioned against the employer to the first payment made under the award, and he shall note the amount of his fees on the award, and shall have a lien therefor on the first payments due under the award.

Sec. 27. Form of agreements and award.—Every agreement for compensation and every award shall be in writing, signed and acknowledged by the parties or by the arbitrator or secretary of the committee hereinbefore referred to, and shall specify the amount due and unpaid by the employer to the workman up to the date of the agreement or award, and if any, the amount of the payments thereafter to be paid by the employer to the workman and the length of time such payments shall continue.

Sec. 28. Filing agreements, awards, etc.—It shall

be the duty of the employer to file or cause to be filed every release of liability hereunder, every agreement for or award of compensation, or modifying an agreement for or award of compensation, under this act, if not filed by the committee or arbitrator, to which he is a party, or a sworn copy thereof, in the office of the district court in the county in which the accident occurred within sixty days after it is made, otherwise it shall be void as against the workman. The said clerk shall accept, receipt for, and file any such release, agreement or award, without fee, and record and index it in the book kept for that purpose. Nothing herein shall be construed to prevent the workman from filing such agreement or award.

Sec. 29. Agreements and awards—When canceled. —At any time within one year after an agreement or award has been so filed, a judge of a district court having jurisdiction may, upon the application of either party, cancel such agreement or award, upon such terms as may be just, if it be shown to his satisfaction that the workman has returned to work and is earning approximately the same or higher wages as or than he did before the accident, or that the agreement or award has been obtained by fraud or undue influence, or that the committee or arbitrator making the award acted without authority or was guilty of serious misconduct, or that the award is grossly inadequate or grossly excessive, or if the employé absents himself so that a reasonable examination of his condition cannot be made, or has departed beyond the boundaries of the United States or Canada.

Sec. 30. Staying proceedings upon agreement or award.—At any time after the filing of an agreement or award and before judgment has been granted thereon, the employer may stay proceedings thereon by filing in the office of the clerk of the district court wherein such agreements or award is filed: (a) A proper certificate

of a qualified insurance company that the amount of the compensation to the workman is insured by it; (b) A proper bond undertaking to secure the payment of the compensation. Such certificate or bond shall first be approved by a judge of the said district court.

Sec. 31. Judgment upon agreement or award.—At any time after an agreement or award has been filed, the workman may apply to the said district court for judgment against the employer for a lump sum equal to eighty per cent of the amount of payments due and unpaid and prospectively due under the agreement or award; and, unless the agreement or award be stayed, modified or canceled, or the liability thereunder be redeemed or otherwise discharged, the court shall examine the workman under oath, and if satisfied that the application is made because of doubt as to the security of his compensation, shall compute the sum and direct judgment accordingly, as if in an action; provided, that if the employer shall give a good and sufficient bond, approved by the court, no execution shall issue on such judgment so long as the employer continues to make payments in accordance with the original agreement or award undiminished by the discount.

Sec. 32. Review or modification of agreement or award.—An agreement or award may be modified at any time by a subsequent agreement; or, at any time after one year from the date of filing; it may be reviewed, upon the application of either party on the ground that the incapacity of the workman has subsequently increased or diminished. Such application shall be made to the said district court; and, unless the parties consent to arbitration, the court may appoint a medical practitioner to examine the workman and report to it; and upon his report and after hearing the evidence of the parties, the court may modify such agreement or award, as may be just, by ending, increasing or dimin-

ishing the compensation, subject to the limitations hereinbefore provided.

Sec. 33. Redemption of liability.—Where any payment has been continued for not less than six months the liability therefor may be redeemed by the employer by the payment to the workman of a lump sum of an amount equal to eighty per cent of the payments which may become due according to the award, such amount to be determined by agreement, or, in default thereof, upon application, to a judge of a district court having jurisdiction. Upon paying such amount the employer shall be discharged from all further liability on account of the injury, and be entitled to a duly executed release, upon filing which or other due proof of payment, the liability upon any agreement or award shall be discharged of record.

Sec. 34. Insurance.—Where the payment of compensation to the workman is insured, by a policy or policies, at the expense of the employer, the insurer shall be subrogated to the rights and duties under this act of the employer, so far as appropriate.

Sec. 35. Courts.—All references hereinbefore to a district court of the state of Kansas having jurisdiction of a civil action between the parties shall be construed as relating to the then existing code of civil procedure. Such court shall make all rules necessary and appropriate to carry out the provisions of this act.

Sec. 36. Actions.—A workman's right to compensation under this act, may, in default of agreement or arbitration, be determined and enforced by action in any court of competent jurisdiction. In every such action the right to trial by jury shall be deemed waived and the case tried by the court without a jury, unless either party, with his notice of trial, or when the case is placed upon the calendar—demand a jury trial. The judgment in the action, if in favor of the plaintiff, shall be for a lump sum equal to the amount of the payments

then due and prospectively due under this act, with interest on the payments overdue, or, in the discretion of the trial judge, for periodical payments as in an award. Where death results from injury, the action shall be brought by the dependent or dependents entitled to the compensation or by the legal representative of the deceased for the benefit of the dependents as herein defined; and in such action the judgment may provide for the proportion of the award to be distributed to or between the several dependents; otherwise such proportions shall be determined by the proper probate court. An action to set aside a release or other discharge of liability on the ground of fraud or mental incompetency may be joined with an action for compensation under this act. No action or proceeding provided for in this act shall be brought or maintained outside of the state of Kansas, and notice thereof may be given by publication against nonresidents of the state in the manner now provided by article 7 of chapter 95, General Statutes of Kansas of 1909 so far as the same may be applicable, and by personal service of a true copy of the first publication within twenty-one days after the date of the said first publication, unless excused by the court upon proper showing that such service cannot be made.

Sec. 37. When the cause of action accrues.—The cause of action shall be deemed in every case, including a case where death results from the injury to have accrued to the injured workman at the time of the accident; and the time limited in which to commence an action for compensation therefor shall run as against him, his legal representatives and dependents from that date.

Sec. 38. Attorney's liens.—Contingent fees of attorneys for services and proceedings under this act shall in every case be subject to approval by the court.

Sec. 39. Certificate required.—If the superintendent of insurance by and with the advice and written

approval of the attorney general certifies that any scheme of compensation, benefit or insurance for the workman of an employer in any employment to which this act applies, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workman, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act or their equivalents, the employer, may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act; and thereupon the employer shall be liable only in accordance with that scheme; but, save as aforesaid, this act shall not apply notwithstanding any contract to the contrary made after this act becomes a law.

Sec. 40. Condition to certificate.—No scheme shall be so certified which does not contain suitable provisions for the equitable distribution of any moneys or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already accrued, if and when such certificate is revoked or the scheme otherwise terminated.

Sec. 41. Certificate to be revocable.—If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or other valid and substantial reasons therefor exist, the superintendent of insurance by and with the attorney general shall revoke the certificate and the scheme shall thereby be terminated.

Sec. 42. Information to be reported.—Where a certified scheme is in effect the employer shall answer all such inquiries and furnish all such accounts in regard thereto as may be required by the superintendent.

Sec. 43. The superintendent of insurance may make all rules and regulations necessary to carry out the purposes of the four preceding sections.

Sec. 44. All employers as defined by this act who shall elect to come within the provisions of this act and of all acts amendatory hereof shall do so by filing a statement to such effect with the secretary of state of this state at any time after taking effect of this act, which election shall be binding upon such employer for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or of any succeeding year, file in the office of the secretary of state a notice in writing to the effect that he withdraws his election to be subject to the provisions of this act. Notice of such election or withdrawal shall be forthwith posted by such employer in conspicuous places in and about his place of business.

Sec. 45. Every employé entitled to come within the provisions of this act, shall be presumed to have done so unless he serve written notice, before injury, upon his employer that he elects not to accept thereunder and thereafter any such employé desiring to change his election shall only do so by serving written notice thereof upon his employer. Any contract wherein an employer requires of an employé as a condition of employment that he shall elect not to come within the provisions of this act shall be void.

Sec. 46. In any action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, where such employer is within the pro-

visions hereof, it shall not be a defense to any employer (as herein in this act defined) who shall not have elected, as hereinbefore provided, to come within the provisions of this act: (a) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that such employé was guilty of contributory negligence but such contributory negligence of said employé shall be considered by the jury in assessing the amount of recovery.

Sec. 47. In an action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, and where such employer has elected to come and is within the provisions of this act as hereinbefore provided, it shall be a defense for such employer in all cases where said employé has elected not to come within the provisions of this act: (a) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that said employé was guilty of contributory negligence; provided, however, that none of these defenses shall be available where the injury was caused by the willful or gross negligence of such employer, or of any managing officer, or managing agent of said employer, or where under the law existing at the time of the death or injury such defenses are not available.

Sec. 48. Nothing in this act shall be construed to amend or repeal section 6999 of the General Statutes of Kansas of 1909, or House bill No. 240 of the Session of

1911, the same being "An act relating to the liability of common carriers by railroads to their employés in certain cases, and repealing all acts and parts of acts so far as the same are in conflict herewith."

§ 293. Formal procedure under the act.—The Kansas Workmen's Compensation Act is administered by the Bureau of Labor and Factory Inspection, whose offices are located in the Capitol Building at Topeka. The only printed matter used by this bureau in connection with the administration of this law at the time this is written is "a blank form for use of employers in filing notice of election to be governed by this law." This form is set out in the following section:

§ 294.—Form of election of employer to come within the provisions of the act.

State of Kansas,
_____ County, } ss:

To the Secretary of State:

You are hereby notified that_____hereby elects to come under the provisions of Chapter 218, Session Laws of 1911, being an act entitled "An Act to Provide Compensation for Workmen Injured in Certain Hazardous Industries"; that said_____ is an employer of labor, and is engaged in the business of_____ _____in the State of Kansas.

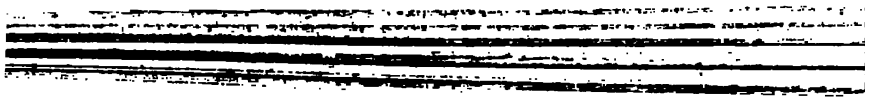
_____

Before me, the undersigned, a notary public in and for the county of_____comes_____ who is personally known to me to be the same person who executed the foregoing instrument of writing, and such person duly acknowledged the same to be his voluntary act and deed, and that he has full authority and power to sign said instrument in writing and to execute the same for the purposes in said writing therein set out.

Witness my hand and notarial seal, this_____ day of_____19___

_____
Notary Public.

My commission expires_____19____



CHAPTER XVII.

THE NEW HAMPSHIRE WORKMEN'S COMPENSATION ACT.

Sec.
295. The nature and scope of the act.
296. Text of the New Hampshire compensation act.
297. Administration of the New Hampshire workmen's compensation act.
298. Formal procedure—List of forms.
299. Form of declaration of employer. (a)
300. Form of report of industrial accident to bureau of labor. (b)
301. Form of supplemental report of industrial accident to bureau of labor. (c)

§ 295. The nature and scope of act.—The New Hampshire Act applies to five extra hazardous employments and is optional in form. The employer in these employments is denied the defenses of fellow servant and assumption of risk but not that of contributory negligence. The employé is denied relief where his injury is caused in full or in part by intoxication, violation of law or serious or wilful misconduct. The injuries covered by the act are those which incapacitate the employé for more than two weeks. The employé loses all right to the benefits of the act by commencing suit for his injuries after acceptance of its provisions. The provisions of Sec. 2, the liability section of the act, shall not apply to any employer who shall have filed with the Commissioner of Labor his declaration in writing that he accepts the succeeding sections, viz. 3 to 13 inclusive, and shall have satisfied the Commissioner of his financial ability to comply or has filed his bond in such form and amount as the Commissioner may prescribe. Any person aggrieved by any decision of the commission respecting the filing of declaration or bonds or matters connected therewith by the employer may ap-

ply by petition to any justice of the superior court for a review of such decision. The justice's decision thereon is final. The compensation provided by the act may be determined by agreement, or by an action at equity in any court having jurisdiction of an action for recovery of damages for negligence. In death cases the court may apportion to each dependent his share of the judgment, and in the absence of such determination any person interested in the judgment may bring proceedings in a probate court of proper jurisdiction and have the apportionment made.

§ 296. Text of the New Hampshire compensation act.—The act became operative January 1, 1912. It provides:

Section 1. This act shall apply only to workmen engaged in manual or mechanical labor in the employments described in this section, which, from the nature, conditions or means of prosecution of such work, are dangerous to the life and limb of workmen engaged therein, because in them the risks of employment and the danger of injury caused by fellow servants are great and difficult to avoid. (a) The operation on steam or electric railroads of locomotives, engines, trains or cars, or the construction, alteration, maintenance or repair of steam railroad tracks or road beds over which such locomotives, engines, trains or cars are or are to be operated. (b) Work in any shop, mill, factory or other place on, in connection with or in proximity to any hoisting apparatus, or any machinery propelled or operated by steam or other mechanical power in which shop, mill, factory or other place five or more persons are engaged in manual or mechanical labor. (c) The construction, operation, alteration or repair of wires or lines of wires, cables, switch-boards or apparatus, charged with electric currents. (d) All work necessitating dangerous proximity to gunpowder, blasting pow-

der, dynamite or any other explosives, where the same are used as instrumentalities of the industry, or to any steam boiler owned or operated by the employer, provided injury is occasioned by the explosion of any such boiler or explosive. (e) Work in or about any quarry, mine or foundry. As to each of said employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

Sec. 2. If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment is caused to any workman employed therein, in whole or in part, by failure of the employer to comply with any statute, or with any order made under authority of law, or by the negligence of the employer or any of his or its officers, agents or employés, or by reason of any defect or insufficiency due to his, its or their negligence in the condition of his or its plant, ways, works, machinery, cars, engines, equipment, or appliances, then such employer shall be liable to such workmen for all damages occasioned to him, or, in case of his death, to his personal representatives for all damages now recoverable under the provisions of chapter 191 of the Public Statutes. The workman shall not be held to have assumed the risk of any injury due to any cause specified in this section; but there shall be no liability under this section for any injury to which it shall be made to appear by a preponderance of evidence that the negligence of the plaintiff contributed. The damages provided for by this section shall be recovered in an action on the case for negligence.

Sec. 3. The provisions of section 2 of this act shall not apply to any employer who shall have filed with the commissioner of labor his declaration in writing that he accepts the provisions of this act as contained in the succeeding sections, and shall have satisfied the commissioner of labor of his financial ability to comply with its

provisions, or shall have filed with the commissioner of labor a bond, in such form and amount as the commissioner may prescribe, conditioned on the discharge by such employer of all liability incurred under this act. Such bond shall be enforced by the commissioner of labor for the benefit of all persons to whom such employer may become liable under this act in the same manner as probate bonds are enforced. The commissioner may, from time to time, order the filing of new bonds, when in his judgment such bonds are necessary; and after thirty days from the communication of such order to any employer, such employer shall be subject to the provisions of section 2 of this act until such order has been complied with. The employer may at any time revoke his acceptance of the provisions of the succeeding sections of this act by filing with the commissioner of labor a declaration to that effect, and by posting copies of such declaration in conspicuous places about the place where his workmen are employed. Any person aggrieved by any decision of the commissioner under this section may apply by petition to any justice of the superior court for a review of such decision and said justice on notice and hearing shall make such order affirming, reversing or modifying such decision as justice may require; and such order shall be final. Such employer shall be liable to all workmen engaged in any of the employments specified in section 1, for any injury arising out of and in the course of their employment, in the manner provided in the following sections of this act. Provided, that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and, provided, that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the intoxication, violation of law, or serious or wilful misconduct of the workman. Provided, fur-

ther, that the employer shall at the election of the workman, or his personal representative, be liable under the provisions of section 2 of this act for all injury caused in whole or in part by wilful failure of the employer to comply with any statute, or with any order made under authority of law.

Sec. 4. The right of action for damages caused by any such injury, at common law, or under any statute in force on January one, nineteen hundred and eleven, shall not be affected by this act, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this act, either by accepting any compensation hereunder, by giving the notice hereinafter prescribed, or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in every action at common law or under any other statute on account of the same injury. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this act against the employer therefor, he shall be barred from all benefit of this act in regard thereto.

Sec. 5. No proceedings for compensation under this act shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured and during such disability, and unless claim for compensation has been made within six months from the occurrence of the accident, or in case of the death of the workman, or in the event of his physical or mental incapacity, within six months after such death or the removal of such physical or mental incapacity, or in the event that weekly payments have been made under this article, within six months after such payments have ceased, but no want or defect

or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall apprise the employer of the claim for compensation under this article, and shall state the name and address of the workman injured, and the date and place of the accident. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

Sec. 6. (1) The amount of compensation shall be, in case death results from injury: (a) If the workman leaves any widow, children or parents, resident of this state, at the time of his death, then wholly dependent on his earnings, a sum to compensate them for loss, equal to one hundred and fifty times the average weekly earnings of such workman when at work on full time during the preceding year during which he shall have been in the employ of the same employer, or if he shall have been in the employment of the same employer for less than a year then one hundred and fifty times his average weekly earnings on full time for such less period. But in no event shall such sum exceed three thousand dollars. Any weekly payments made under this act shall be deducted from the sum so fixed. (b) If such widow, children or parents at the time of his death are in part only dependent upon his earnings, such proportion of the benefits provided for those wholly dependent as the amount of the wage contributed by the deceased to such partial dependents at the time of injury bore to the total wage of the deceased. (c) If he leaves no such dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars. Whatever sum may be determined to be payable under this act in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such

dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

(2) Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, not exceeding fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding one-half the average weekly earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earnings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this act exceed the damage suffered, nor shall any weekly payment payable under this act in any event exceed ten dollars a week or extend over more than three hundred weeks from the date of the accident. Such payment shall continue for such period of three hundred weeks provided total or partial disability continue during such period. No such payment shall be

due or payable for any time prior to the giving of the notice required by section 5 of this act.

Sec. 7. Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within two weeks after the injury, and thereafter at intervals not oftener than once in a week. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Sec. 8. In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this act, the guardian of the incompetent appointed pursuant to law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege, and no limitation of time in this act provided for shall run so long as said incompetent workman has no guardian.

Sec. 9. Any question as to compensation which may arise under this act shall be determined by agreement or by an action at equity, as hereinafter provided. In case the employer fail to make compensation as herein provided, the injured workman, or his guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this act in any court having jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. Such action shall be by petition in equity, which may be made returnable at the appropriate term of the superior court or may be filed in the office of the clerk of the superior court and pre-

sented in term time or vacation to any justice of said court, who on reasonable notice shall hear the parties and render judgment thereon. The judgment in such action if in favor of the plaintiff shall be for a lump sum equal to the amount of payments then due and prospectively due under this act. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the probate court in which such executor or administrator is appointed, in accordance with this act, on petition of any party interested, on such notice as such court may direct. Any employer who has declared his intention to act under the compensation features of this act shall also have the right to apply by similar proceedings to the superior court or to any justice thereof for a determination of the amount of the weekly payments to be paid the injured workman, or of a lump sum to be paid the injured workman in lieu of such weekly payments; and either such employer or workman may apply to said superior court or to any justice thereof in similar proceeding for the determination of any other question that may arise under the compensation feature of this act; and said court or justice, after reasonable notice and hearing, may make such order as to the matter in dispute and taxable costs as justice may require.

Sec. 10. Any person entitled to weekly payments under this act against any employer shall have the same preferential claim therefor against the assets of the employer as is allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this act shall not be assignable or subject to levy, execution, attachment or satisfaction of debts. Any right to receive compensation under this act shall be extinguished by the death of the person entitled thereto.

Sec. 11. No claim of any attorney-at-law for any

contingent interest in any recovery under this act for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the account of the same be approved in writing by a justice of the superior court, or, in case the same be tried in any court, by the justice presiding at such trial.

Sec. 12. Every employer subject to the provisions of this act, shall from time to time make to the commissioner of labor such returns as to its operation as said commissioner may require upon blanks to be furnished by said commissioner. Any employer failing to make such returns when required by said commissioner shall, until such returns are made, be subject to the provisions of section 2 of this act.

§ 297. Administration of the New Hampshire workmen's compensation act.—The New Hampshire compensation act does not provide for a board charged with duties of administration. In this respect it is similar to the New Jersey act and is presumed to work automatically. The act, however, provides that the commissioner of labor shall prescribe certain forms of declaration and reports of industrial accidents to be filled out by employers covered by the act and filed with the bureau of labor.

§ 298. Formal procedure—List of forms.—The commissioner of labor of New Hampshire, pursuant to the provisions of the act, has prescribed three forms which are required to be used by employers covered by the act. They are designated as follows: (a) Declaration of employer that he accepts the provision of the act; (b) Report of industrial accident—Part I; (c) Supplemental report of industrial accident—Part II.

§ 299. Form of declaration of employer. (a)

To the Commissioner of Labor of the State of New Hampshire, Concord, N. H.:

The undersigned_____in accordance with Section 3 of Chapter 163 of the Laws of New Hampshire of

1911, hereby declares that it accepts the provisions of the said Chapter 163, Laws of 1911, relating to compensation payable to injured workmen in its employ, and attaches hereto a copy of its last financial statement for the period ending_____as evidence of its ability to comply with the provisions of the said act.

(SEAL) _____

ATTEST: BY_____

STATE OF _____ } ss.
COUNTY OF_____ }

On this_____day of_____in the year_____before me personally came_____to me known, who being by me duly sworn, did depose and say that he resides in_____; that he is the_____of_____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(SEAL) _____

Notary Public.

§ 300. Form of report of industrial accident to bureau of labor. (b)[1]

Part I.

Employer, place and time.

No._____Employer's name_____Office address: Street and No._____City or town_____State_____Nature of business_____Location of plant or place of work where accident occurred, if not at office address_____

The injured person—

Name _____Address _____Age _____Nativity _____ What language spoken and understood?_____Parent or guardian, if minor_____State whether manual or mechanical labor, and employment as specified in a, b, c, d, e, of section 1, chapter 163, Laws of 1911[1a]_____Length of experience (here and elsewhere) in this employment_____Regular occupation, or not_____ Piece or time worker_____Wages, or average earnings per day _____Working days per week_____

The injury—

Date an exact hour of accident_____Date notice was received by employer_____State fully nature and extent of injury_____ Employment or department in which accident occurred_____

Machine or appliance causing Accident—

Name of machine, tool, device or other appliance_____Did the

[1] Immediate report.

[1a] See ante, § 296.

employé thoroughly understand the machine, tool or device and was he properly instructed regarding its operation; cleaning when not in operation; how to shut off power quickly_____
What safeguards?_____Was machine, or part of machine, or appliance on which accident occurred defective?_____
Had management been notified of defect?_____
Medical Attendance—
Attending physician, or hospital where sent_____
Name _____Address _____

§ 301. Form of supplemental report of industrial accident to bureau of labor. (c)[2]

Part II.

Name of employer_____Name of injured person_____
Extent of Disability—
Did injury result in death?_____If not, has it caused—

a. Permanent total disability (meaning inability to do any work)? _____If so, state nature of permanent injury or condition causing such disability_____
b. Permanent partial disability (meaning ability to do some work but not of same kind or amount as before accident)?_____ If so, state nature of permanent injury or condition causing such disability_____On what date was work resumed?_____ Present wages, or average earnings, per day at such work_____
c. Temporary disability (meaning that injured person has been able to resume same kind and amount of work as before accident)?_____If so, for how many working days did such disability last?_____
d. Disability, the extent of which is not known two weeks after first report?_____If so, state estimated period of disability _____

(In this case the employer is expected to keep a record from which report of ultimate extent of disability can be furnished when requested.)

Dependents—
In case injury caused death or permanent total disability as shown above, give name, address, age and relationship of each person dependent on injured person's earnings:
Name _____Address _____Age _____
Relationship _____Date _____Report made out by_____
Whose position with_____
(Name of employer.)
Is _____
(Owner, superintendent or who.)

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[2] Report on disability. Part II, to be sent in at the end of two weeks.

CHAPTER XVIII.

THE MASSACHUSETTS WORKMEN'S COMPENSATION ACT.

Sec.
302. Nature and scope of the Massachusetts workmen's compensation act.
303. Text of the Massachusetts compensation act.
304. Text of an act to authorize certain mutual insurance companies to transact the business of employers' liability insurance, so-called.
305. Text of an act relative to the insurance of compensation to employés for personal injuries received in the course of their employment.
306. Text of an act to authorize certain advances from the treasury of the commonwealth to the Massachusetts employés' insurance association.
307. Opinion of the supreme judicial court sustaining constitutionality of compensation act.
308. Rules of Industrial Accident Board.
309. Formal procedure—List of forms.
310. Form of notice to employés. (a)
311. Form of notice of claim of common-law rights. (b)
312. Form of notice of waiver or rights under common law previously claimed. (c)
313. Form of agreement for redeeming liability by payment of lump sum. (d)
314. Form of notice that an employer has ceased to be a subscriber. (e)
315. Form of notice to industrial accident board that an injured employé has refused to submit himself to an examination. (f)
316. Form of notice to employé from industrial accident board relative to his refusal to submit himself to an examination. (g)
317. Form of agreement in regard to compensation. (h)
318. Form of claim for compensation for injury. (i)
319. Form of notice of injury. (j)
319. Form of notice of injury. (j)
320. Form of report of committee on arbitration. (k)
321. Form of application for review of claim before full board. (l)
322. Form of notice assessing cost of proceedings before arbitration committee upon party prosecuting or defending same without reasonable grounds. (m)
323. Form of receipt on account of compensation. (n)
324. Form of settlement receipt. (o)

§ 302. Nature and scope of the Massachusetts workmen's compensation act.—The Massachusetts act affects directly or indirectly all employés, except domestic servants and farm laborers. Employers who do not insure under the act, but elect to remain under the common law are deprived of the defenses of contributory negligence, negligence of fellow servant and assumption of risk by the employé. The act allows the employer to protect himself by becoming a subscriber to the Massachusetts Employés Insurance Association, or by insuring the liability to pay the compensation in a company, authorized to do liability insurance business in Massachusetts.

The employé is deprived of all compensation where the injury is caused by his own "serious and wilful misconduct." The amount of the compensation is doubled where the injury is due to the "serious and wilful misconduct of his employer," or "of any person regularly entrusted with and exercising the power of superintendence."

An employé of a subscriber may elect to sue at law by giving his employer notice in writing at the time of his contract of hire, that he claims such right, or if the contract of hire is made before the employer becomes a subscriber, then the employé must give the notice within thirty days of the notice of such subscription.

The act requires all employers to keep a record of injuries received by employés in the course of their employment, and report the same in detail within forty-eight hours of their occurrence under penalty of a fine of $50 for each failure to do so.

The act provides in considerable detail for the establishment of an industrial accident board, which is given general supervision over all parties affected and this board is clothed with quasi-judicial powers.

§ 303. Text of the Massachusetts compensation act. —The act is divided into five parts and is as follows:

PART I—MODIFICATION OF REMEDIES.

Sec. 1. In an action to recover damages for personal injury sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was negligent;

2. That the injury was caused by the negligence of a fellow employé;

3. That the employé had assumed the risk of the injury.

Sec. 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers.

Sec. 3. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by employés of a subscriber.

Sec. 4. The provisions of sections one hundred and twenty-seven to one hundred and thirty-five, inclusive, and of one hundred and forty-one to one hundred and forty-three, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, and of any acts in amendment thereof, shall not apply to employés of a subscriber while this act is in effect.

Sec. 5. An employé of a subscriber shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such right, or if the contract of hire was made before the employer became a subscriber, if the employé shall not have given the said notice within thirty days of notice of such subscription. An employé who has given notice to his employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take

effect five days after it is delivered to the employer or his agent. (See Ch. 666 Mass. Acts of 1912.)

PART II—PAYMENTS.

Sec. 1. If an employé, who has not given notice of his claim of common law rights of action, as provided in Part I, section five, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the association, as hereinafter provided, if his employer is a subscriber at the time of the injury.

Sec. 2. If the employé is injured by reason of his serious and wilful misconduct, he shall not receive compensation.

Sec. 3. (As amended by Section 1 of Ch. 571, Acts of 1912). If the employé is insured by reason of the serious and wilful misconduct of a subscriber or of any person regularly entrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In such case the subscriber shall repay to the association the extra compensation paid to the employé. If a claim is made under this section, the subscriber shall be allowed to appear and defend against such claim only.

Sec. 4. No compensation shall be paid under this act for any injury which does not incapacitate the employé for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

Sec. 5. During the first two weeks after the injury, the association shall furnish reasonable medical and hospital services, and medicines when they are needed.

Sec. 6. If death results from the injury, the association shall pay the dependents of the employé, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his aver-

age weekly wages, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury. If the employé leaves dependents only partly dependent upon his earnings for support at the time of his injury, the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employé to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employé before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury.

Sec. 7. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:—

(a) A wife upon a husband with whom she lives at the time of his death.

(b) A husband upon a wife with whom he lives at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one

wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

Sec. 8. If the employé leaves no dependents, the association shall pay the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

Sec. 9. While the incapacity for work resulting from the injury is total, the association shall pay the injured employé a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor the amount more than three thousand dollars.

Sec. 10. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employé a weekly compensation equal to one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

Sec. 11. (As amended by Section 2, Ch. 571, Acts of 1912). In case of the following specified injuries the amounts hereinafter named shall be paid in addition to all other compensation:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one-tenth of normal vision in both eyes with glasses, one-half of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or

the reduction to one-tenth of normal vision in either eye with glasses, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

Sec. 12. No savings or insurance of the injured employé, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the association be considered in fixing the compensation under this act.

Sec. 13. The compensation payable under this act in case of the death of the injured employé shall be paid to his legal representative; or, if he has no legal representative, to his dependents; or, if he leaves no dependents, to the persons to whom payment of the expenses for the last sickness and burial is due. If the payment is made to the legal representative of the deceased employé, it shall be paid by him to the dependents or other persons entitled thereto under this act.

Sec. 14. If an injured employé is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

Sec. 15. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the association or

subscriber as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employé, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

Sec. 16. (As amended by Chapter 172, Acts of 1912, and Section 3 of Chapter 571, Acts of 1912). The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury, and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf. Any form of written communication signed by any person who may give the notice as above provided, which contains the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice.

Sec. 17. The notice shall be served upon the association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

Sec. 18. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead and the association was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury.

Sec. 19. (As amended by section 4 of chapter 571, Acts of 1912). After an employé has received an injury, and from time to time thereafter during the continuance of his disability he shall, if so requested by the association or subscriber, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the commonwealth, furnished and paid for by the association or subscriber. The employé shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited.

Sec. 20. No agreement by an employé to waive his rights to compensation under this act shall be valid.

Sec. 21. No payment under this act shall be assignable or subject to attachment, or be liable in any way for any debts.

Sec. 22. Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the industrial accident board.

Sec. 23. (As amended by section 5 of chapter 571, Acts of 1912). The claim for compensation shall be in writing and shall state the time, place, cause and nature of the injury; it shall be signed by the person injured or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf, and shall be filed with the industrial accident board. The failure to make a claim within the period prescribed by section fifteen shall not be a bar to the maintenance of proceedings under this act if it is found that it was occasioned by mistake or other reasonable cause.

PART III—PROCEDURE.

Sec. 1. (As amended by section 6 of chapter 571, Acts of 1912). There shall be an industrial accident board consisting of five members, to be appointed by the governor, by and with the advice and consent of the council, one of whom shall be designated by the governor as chairman. The term of office of members of this board shall be five years, except that when first constituted one member shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed every year for the full term of five years.

Sec. 2. (As amended by section 7 of chapter 571, Acts of 1912). The salaries and expenses of the board shall be paid by the commonwealth. The salary of the chairman shall be five thousand dollars a year, and the salary of the other members shall be forty-five hundred ($4,500) dollars a year each. The board may appoint a secretary at a salary of not more than three thousand dollars a year and may remove him. It shall also be allowed an annual sum, not exceeding ten thousand dollars, for clerical service, and travelling and other necessary expenses. The board shall be provided with an office in the state house or in some other suitable building in the city of Boston, in which its records shall be kept.

Sec. 3. (As amended by section 8 of chapter 571, Acts of 1912). The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to subpoena witnesses, administer oaths, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. The fees for attending as a witness before the industrial accident board shall be one dollar and fifty cents a day, for attending before an arbitration

committee fifty cents a day; in both cases five cents a mile for travel out and home.

The superior court shall have power to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records.

Sec. 4. (As amended by section 9 of chapter 571, Acts of 1912). If the association and the injured employé reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the industrial accident board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of Part III, section eleven. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

Sec. 5. (As amended by section 10 of chapter 571, Acts of 1912). If the association and the injured employé fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board and shall act as chairman. The other two members shall be named, respectively, by the two parties. If the subscriber has appeared under the provisions of Part II, Section 3, the member named by the association shall be subject to his approval. If a vacancy occurs it shall be filled by the party whose representative is unable to act.

The arbitrators appointed by the parties shall be sworn by the chairman as follows: I, ... do solemnly swear that I will faithfully perform my duty as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party. So help me God.

Sec. 6. (As amended by section 11, chapter 571,

Acts of 1912). It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification, as above provided, or after a vacancy has occurred, the board or any member thereof shall fill the vacancy and notify the parties to that effect.

Sec. 7. (As amended by section 12 of chapter 571, Acts of 1912). The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held in the city or town where the injury occurred, and the decision of the committee together with a statement of the evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall be enforcible under the provisions of Part III, section eleven.

Sec. 8. The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employé and to report. The fee for this service shall be five dollars and travelling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

Sec. 9. The arbitrators named by or for the parties to the dispute shall each receive five dollars as a fee for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the association, which shall deduct an amount equal to one-third of the sum from any compensation found due the employé.

Sec. 10. (As amended by section 13 of chapter 571, Acts of 1912). If a claim for a review is filed, as provided

in Part III, section seven, the board shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

Sec. 11. (As amended by section 14 of chapter 571, Acts of 1912). Any party in interest may present certified copies of an order or decision of the board, a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the board, and all papers in connection therewith, to the superior court for the county in which the injury occurred or for the county of Suffolk, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact, or where the decree is based upon a decision of an arbitration committee or a memorandum of agreement, and that there shall be no appeal from a decree based upon an order or decision of the board which has not been presented to the court within ten days after the notice of the filing thereof by the board. Upon the presentation to it of a certified copy of a decision of the industrial accident board ending, diminishing or increasing a weekly payment under the provisions of Part III, section twelve, the court shall revoke or modify the decree to conform to such decision.

Sec. 12. Any weekly payment under this act may be reviewed by the industrial accident board at the re-

quest of the association or of the employé; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts above provided, if the board finds that the condition of the employé warrants such action.

Sec. 13. Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board.

Sec. 14. If the committee of arbitration, industrial accident board, or any court before whom any proceedings are brought under this act determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

Sec. 15. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages, or against the association for compensation under this act, but not against both; and if compensation be paid under this act, the association may enforce in the name of the employé, or in its own name and for its own benefit, the liability of such other person.

Sec. 16. (As amended by section 15 of chapter 571, Acts of 1912). All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board. The decisions of the industrial accident board shall for all purposes be enforceable under the provisions of Part III, section eleven.

Sec. 17. If a subscriber enters into a contract, written or oral, with an independent contractor to do such subscriber's work, or if such a contractor enters into

a contract with a subcontractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work were executed by employés immediately employed by the subscriber, be liable to pay compensation under this act to those employés, the association shall pay to such employés any compensation which would be payable to them under this act if the independent or subcontractors were subscribers. The association, however, shall be entitled to recover indemnity from any other person who would have been liable to such employés independently of this section, and if the association has paid compensation under the terms of this section, it may enforce in the name of the employé, or in its own name and for the benefit of the association, the liability of such other person. This section shall not apply to any contract of an independent or subcontractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by the subscriber, nor to any case where the injury occurred elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work for the subscriber or which are under the control or management of the subscriber.

Sec. 18. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employé or, if such disability extends beyond a period of sixty days, at the expiration of such period, the employer shall make a supplemental report on blanks to be procured from the board for that purpose.

The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employé, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offense.

PART IV—THE MASSACHUSETTS EMPLOYES INSURANCE ASSOCIATION.[1]

Sec. 1. The Massachusetts Employés Insurance Association is hereby created a body corporate with the powers provided in this act and with all the general corporate powers incident thereto.

Sec. 2. The governor shall appoint a board of directors of the association, consisting of fifteen members, who shall serve for a term of one year, or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide.

Sec. 3. Until the first meeting of the subscribers the board of directors shall have and exercise all the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions of this act, which shall be in effect until amended or repealed by the subscribers.

Sec. 4. The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.

Sec. 5. Seven or more of the directors shall constitute a quorum for the transaction of business.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

Sec. 6. Any employer in the commonwealth may become a subscriber.

[1] See chapter 721, Acts of 1912.

Sec. 7. The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than ten days before the date fixed for the meeting.

Sec. 8. In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber has five hundred employés to whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employés to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by the right of proxy, more than twenty votes.

Sec. 9. No policy shall be issued by the association until not less than one hundred employers have subscribed, who have not less than ten thousand employés to whom the association may be bound to pay compensation.

Sec. 10. No policy shall be issued until a list of the subscribers, with the number of employés of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within thirty days of the granting of a license to the association by the insurance commissioner to issue policies.

Sec. 11. If the number of subscribers falls below one hundred, or the number of employés to whom the association may be bound to pay compensation falls below ten thousand, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than one

hundred who have not less than ten thousand employés, said subscriptions to be subject to the provisions contained in the preceding section.

Sec. 12. Upon the filing of the certificate provided for in the two preceding sections the insurance commissioner shall make such investigation as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies.

Sec. 13. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

Sec. 14. The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

Sec. 15. If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability.

Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

Sec. 16. The board of directors may, from time to time, by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensa-

tion which may be payable on account of injuries sustained and expenses incurred.

All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

Sec. 17. Any proposed premium, assessment, divident or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by the insurance commissioner after such investigation as he may deem necessary. (See chapter 666, Acts of 1912).

Sec. 18. The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors of the association shall have free access to all such premises during regular working hours.

Any subscriber or employé aggrieved by any such rule or regulation may petition the industrial accident board for a review, and it may affirm, amend, or annul the rule or regulation.

Sec. 19. If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury.

Sec. 20. Every subscriber shall, as soon as he secures a policy, give notice in writing or print, to all persons under contract of hire with him that he has provided for payment to injured employés by the association.

Sec. 21. (As amended by section 16 of chapter 571, Acts of 1912). Every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for

payment to injured employés by the association. If an employer ceases to be a subscriber he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract with him. In case of the renewal of the policy no notice shall be required under the provisions of this act. He shall file a copy of said notice with the industrial accident board. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the industrial accident board.

Sec. 22. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay to an employé any damages on account of personal injury sustained by such employé during the period of such subscription, the association shall pay to the subscriber the full amount of such judgment and the cost assessed therewith, if the subscriber shall have given the association notice in writing of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same.

Sec. 23. The provisions of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and of acts in amendment thereof shall apply to the association, so far as such provisions are pertinent and not in conflict with the provisions of this act, except that the corporate powers shall not expire because of failure to issue policies or make insurance.

Sec. 24. The board of directors appointed by the governor under the provisions of Part IV, section two, may incur such expenses in the performance of its duties as shall be approved by the governor and council. Such expenses shall be paid from the treasury of the commonwealth and shall not exceed in amount the sum of fifteen thousand dollars.

PART V—MISCELLANEOUS PROVISIONS.

Section 1. If an employé of a subscriber files any claim with or accepts any payment from the association on account of personal injury, or makes any agreement, or submits any question to arbitration, under this act, such action shall constitute a release to the subscriber of all claims or demands at law, if any, arising from the injury.

Sec. 2. The following words and phrases, as used in this act, shall, unless a different meaning is plainly required by the context, have the following meaning:—

"Employer" shall include the legal representative of a deceased employer.

"Employé" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employé who has been injured shall, when the employé is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

"Dependents" shall mean members of the employé's family or next of kin who were wholly or partly dependent upon the earnings of the employé for support at the time of the injury.

"Average weekly wages" shall mean the earnings of the injured employé during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employé lost more than two weeks' time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where, by reason of the shortness of the time during which the employé has been in the employment of his employer, or

the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer; or, if there is no person so employed by a person in the same grade employed in the same class of employment and in the same district.

"Association" shall mean the Massachusetts Employés Insurance Association.

"Subscriber" shall mean an employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor, provided that the association holds a license issued by the insurance commissioner as provided in Part IV, section twelve.

Sec. 3. (As amended by section 17 of chapter 571, Acts of 1912). Any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II of this act, and when such liability company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to the provisions of Parts I, II, III and V and of section twenty-two of Part IV of this act, and shall file with the insurance department its classifications of risks and premiums relating thereto and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply.

Sec. 4. (As amended by section 18 of chapter 571, Acts of 1912). Sections one hundred and thirty-six to

one hundred and thirty-nine, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine are hereby repealed.

Sec. 5. The provisions of this act shall not apply to injuries sustained prior to the taking effect thereof.

Sec. 6. (As amended by section 19 of chapter 571, Acts of 1912). Part IV of this act shall take effect on the first day of January, nineteen hundred and twelve; sections one to three, inclusive, of Part III shall take effect on the tenth day of May, nineteen hundred and twelve; the remainder thereof shall take effect on the first day of July, nineteen hundred and twelve.

§ 304. Text of act to authorize certain mutual insurance companies to transact the business of employers' liability insurance, so-called.—This act, which became effective March 22, 1912, provides:

Sec. 1. Section one of chapter two hundred and fifty-one of the acts of the year nineteen hundred and eleven is hereby amended by adding at the end thereof the words:—Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two-thirds vote of the policyholders present and voting at a meeting duly called for that purpose,—so as to read as follows:—Section 1. Ten or more persons who are residents of this commonwealth may form an insurance company on the mutual plan to insure any person, firm or corporation against loss or damage on account of the bodily injury or death by accident of any person, or against damage caused by automobiles to property of another, for which loss or damage such person, firm or corporation is responsible. The corporation shall be formed in

the manner described in, and be subject to, the provisions of sections fifteen to twenty, inclusive, of chapter one hundred and ten of the Revised Laws, except as is otherwise provided herein. Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two-thirds vote of the policyholders present and voting at a meeting duly called for that purpose. (Chapter 311, Acts of 1912.)

§ 305. Text of act relative to the insurance of compensation to employés for personal injuries received in the course of their employment.—This act, which became operative May 28, 1912, provides:

Sec. 1. The insurance commissioner may withdraw his approval of any premium or distribution of subscribers given by him to the Massachusetts Employés Insurance Association under the provisions of section seventeen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, or of any premium or rate made by an insurance company and approved by him under the provisions of section three of Part V of said chapter seven hundred and fifty-one as amended by section seventeen of chapter five hundred and seventy-one of the acts of the year nineteen hundred and twelve.

Sec. 2. The notices required by section five of Part I of said chapter seven hundred and fifty-one shall be given in such manner as the industrial accident board may approve. (Chapter 666, Acts of 1912.)

§ 306. Text of act to authorize certain advances from the treasury of the commonwealth to the Massa-

chusetts employés insurance association.—This act, which became operative June 6, 1912, provides:

Sec. 1. For the purpose of enabling the Massachusetts Employés Insurance Association to carry out the provisions of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, the treasurer and receiver general, from time to time, within one year after the date of the passage of this act, may advance to the said association from the treasury of the commonwealth sums of money not exceeding in the aggregate one hundred thousand dollars. For the moneys so advanced the association shall execute and deliver to the treasurer its promissory notes payable to the order of the commonwealth within four years after the respective dates thereof, with interest at the rate of four per cent. per annum, payable semi-annually. The notes shall be signed by the treasurer of said association and countersigned by its president, and shall be payable either serially or by installments, so that at least one-fourth of the aggregate indebtedness shall be paid in each calendar year, beginning with the first day of January, nineteen hundred and thirteen.

Sec. 2. The treasurer and receiver general is hereby authorized to borrow upon the credit of the commonwealth, from time to time, such amounts as may be necessary to cover the advances authorized in section one of this act. All money so borrowed shall be deposited in the state treasury, and the treasurer and receiver general shall pay out the same as ordered by said association, and shall keep a separate and accurate account of all sums so borrowed and advanced.

Sec. 3. The provisions of Part IV of said chapter seven hundred and fifty-one in regard to assessments to provide for the payment of losses and expenses shall also apply to and authorize assessments, so far as they may be necesary, for the payment of said notes and of the interest thereon.

Sec. 4. Notes issued under the provisions of this act shall not be considered as rendering the association deficient in funds, so long as the liability of subscribers to assessment exceeds the amount of said notes less the proceeds of said notes still in the hands of the association. (Chapter 721, Acts of 1912.)

§ 307. Opinion of the supreme judicial court sustaining constitutionality of compensation act.—The question of the constitutionality of the Massachusetts act was submited to the supreme judicial court under the following resolution of the senate:

Whereas, There is now before the Senate a bill entitled "An Act relative to payments to employés for personal injuries received in the course of their employment and to the prevention of such injuries," being House Document No. 2154; and

Whereas, No similar legislation has ever been enacted in this commonwealth; and

Whereas, An act for a similar purpose was enacted in the State of New York, and has been decided to be in violation of the constitution of the State of New York and of the Fourteenth Amendment to the Constitution of the United States; and

Whereas, There appears to be no precedent bearing on said subject in other jurisdictions in the United States;

Be it ordered, That the opinion of the Justices of the Supreme Judicial Court be required on the following important questions of law:—

First. Is the said bill, House Document No. 2154, in conformity with the provisions of the constitution of the commonwealth of Massachusetts which requires that property shall not be taken from a citizen without due process of law?

Second. Is the bill in conformity with the fourteenth amendment to the Federal Constitution?

On July 24, 1911, the Justices sent to the Senate their response[1a] in these words:

To the Honorable the Senate of the Commonwealth of Massachusetts:

We have received the questions, of which a copy with the act referred to therein and the amendment adopted by the Senate, is hereto annexed, and after giving to them such consideration as we have been able to give in the time at our disposal, we respectfully answer them as follows:

The questions submitted to us are important, and the proposed act involves a radical departure in the manner of dealing with actions or claims for damages for personal injuries received by employés in the course of their employment from that which has heretofore prevailed in this commonwealth; but we think that nothing would be gained by an extended discussion and we therefore content ourselves with stating briefly the conclusions to which we have come and our reasons therefor.

The first section of the act (Part I, § 1) provides that "In an action to recover damages for personal injury sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was negligent;

2. That the injury was caused by the negligence of a fellow employé;

3. That the employé had assumed the risk of the injury."

This section deals with actions at common law. We construe clauses 1 and 2 in their reference to negligence as meaning contributory negligence or negligence on the part of a fellow servant which falls short of the serious and wilful misconduct which under Part II, § 2,

[1a] In re Opinion of Justices, 209 Mass. 607, 96 N. E. 308.

will deprive an employé of compensation. So construed we think that the section is constitutional. We neither express nor intimate any opinion whether it would be unconstitutional if otherwise construed. The rules of law relating to contributory negligence and assumption of the risk and the effect of negligence by a fellow servant were established by the courts, not by the Constitution, and the Legislature may change them or do away with them altogether as defenses (as it has to some extent in the employer's liability act) as in its wisdom in the exercise of powers intrusted to it by the Constitution it deems will be best for the "good and welfare of this Commonwealth." See Missouri Pacific Railway v. Mackey, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107; Minnesota Iron Co. v. Kline, 199 U. S. 593, 50 L. ed. 322, 26 Sup. Ct. 159. The act expressly provides that it shall not apply to injuries sustained before it takes effect. If, therefore, a right of action which has accrued under existing laws for personal injuries constitutes a vested right or interest, there is nothing in the section which interferes with such rights or interests. The effect of the section is not to authorize the taking of property without due process of law, as the Court of Appeals of New York held was the case with the statute referred to in the preamble to the questions submitted to us, and which in consequence thereof was declared by that court to be unconstitutional. Ives v. South Buffalo Railway, 201 N. Y. 271, 94 N. E. 431. Construing the section as we do and as we think that it should be construed, it seems to us that there is nothing in it which violates any rights secured by the State or Federal Constitutions. We see nothing unconstitutional in providing, as is done in Part I, § 2, that the provisions of § 1 shall not apply to domestic servants and farm laborers; nor in providing, as is done in Part I, § 5, that the employé shall be deemed to have waived his right of action at common law if he shall not have

given notice to his employer as therein provided. The effect of the provisions referred to is to leave it at the employé's option whether he will or will not waive his right of action at common law. See Foster v. Morse, 132 Mass. 354, 42 Am. Rep. 438.

The rest of the act deals mainly with a scheme for providing, through the instrumentality of a corporation established for that purpose entitled the Massachusetts Employés Insurance Association, and the subscription of employers thereto, for compensation to employés for personal injuries received by them in the course of their employment, and not due to serious and wilful misconduct on their part. There is nothing in the act which compels an employer to become a subscriber to the Association, or which compels an employé to waive his right of action at common law and accept the compensation provided for in the act. In this respect the act differs wholly so far as the employer is concerned from the New York statute above referred to. By subscribing to the Association an employer voluntarily agrees to be bound by the provisions of the act. The same is true of an employé who does not choose to stand upon his common law rights. An employer who does not subscribe to the Association will no longer have the right in an action by his employé against him at common law to set up the defense of contributory negligence or assumption of the risk, or to show that the injury was caused by the negligence of a fellow servant. In the case of an employé who does not accept the compensation provided for by the act and whose employer had become a subscriber to the Association, an action no longer can be maintained for death under the employer's liability act. But these considerations do not constitute legal compulsion or a deprivation of fundamental rights. We do not deem it necessary to take up and consider in detail the numerous provisions by which the right to compensation and the amount thereof and

the persons entitled thereto and the course of procedure to be followed and matters relating thereto are to be settled and determined. We assume, however, that the meaning of §§ 4 and 7 of Part III of the proposed act is that the approved agreement or decision therein mentioned is to be enforced by proper proceedings in court, and not by process to be issued by the industrial accident board itself. Taking in account the non-compulsory character of the proposed act, we see nothing in any of these provisions which is not "in conformity with" the fourteenth amendment to the Federal Constitution, or which infringes upon any provision of our own Constitution in regard to the taking of property "without due process of law." It is within the power of the Legislature to provide that no agreement by an employé to waive his rights to compensation under the act shall be valid. See Missouri Pacific Railway v. Mackey, 127 U. S. 205, 32 L. ed. 107, 8 Sup. Ct. 1161; Minnesota Iron Co. v. Kline, 199 U. S. 593, 50 L. ed. 322, 26 Sup. Ct. 159.

In regard to the amendment it is to be observed that no liability insurance company is obliged to insure, and that if it chooses to do so there is nothing unconstitutional in requiring that it and the policyholder shall be governed by the provisions of the act so far as applicable.

It should be noted perhaps in the interest of accuracy that there is no phrase in our Constitution which in terms requires that "property shall not be taken from a citizen without due process of law." The quoted words, which we take from the first question submitted to us, are a paraphrase of what is contained in the Constitution, but are not the language of the Constitution itself.

We have confined ourselves to the questions submitted to us, and we answer both of them in the affirmative.

Owing to their absence from the commonwealth, the Chief Justice and Mr. Justice Loring have taken no part in the consideration of the questions.

JAMES M. MORTON.
JOHN W. HAMMOND.
HENRY K. BRALEY.
HENRY N. SHELDON.
ARTHUR PRENTICE RUGG.

July 24, 1911.

§ 308. Rules of Industrial Accident Board.—The act provides for the creation of the Industrial Accident Board and invests it with the general supervision over all parties affected by the act and quasi judicial powers. This board under its authority to prescribe rules has promulgated the following rules for the administration of the law.

Rule 1. Manner of giving notice by employer of acceptance of the act.—If personal service is not made of the notices required by sections 20 and 21 of Part IV, chapter 751 of the Acts of 1911, and the amendments thereto, said notices may be given by posting the same at one or more of the principal entrances to the factory, shop or place of business of the employer, and in each room where labor is employed; said notices to be printed or typewritten.

Supplement to Rule 1.—It has been represented to the Industrial Accident Board that it is possible that employés may be engaged for labor away from the office or headquarters of the subscriber, or may be employed in more than one place or office, and that in these cases personal notice is not always possible or practical. To meet this situation the Board has passed the following supplement to Rule No. 1:—

Where the same employés are employed in more than one room in a building, or in various places, or where employers are engaged in such business as that

of managing office buildings, and personal service of the notices required by sections 20 and 21, Part IV, chapter 751 of the Acts of 1911, and amendments thereto, is not made, said notices can be served by posting the same at one or more of the principal entrances to each building so managed, or where labor is employed, or by posting the same in a conspicuous place near any time clock or other registering device which employés in any such building are required to use, or by posting the same at the entrance to the office of the janitor of said building, or by posting the same at the place where the employé is hired.

Rule 2. Manner of giving notice by employé to employer.—In each instance the notice shall be served upon the employer, or upon one employer if there are more employers than one, or upon any officer or agent of a corporation if the employer is a corporation, by delivering the same to the person on whom it is to be served, or by leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business. (Section 5, Part I, chapter 751, of the Acts of 1911, and amendments thereto.)

Rule 3. Report of accidents by association or insurance companies to the board.—That the association and liability insurance companies report to it all accidents within five days after receipt of notice thereof by them from any subscriber, by sending to the Industrial Accident Board a list or brief statement of the same.

Rule 4. Additional copy of employés claim for compensation to be sent to insurance association or company.—An employé making a claim for compensation under this act shall furnish the association or insurance company against whom said claim is made with a copy thereof by mail or otherwise forthwith, upon the filing of the same with the Industrial Accident Board. This

rule shall be without prejudice to any rights acquired by the filing of said claim with the Board under the provisions of Part II, section 23, chapter 751 of the Acts of 1911, and amendments thereto, or by other provisions of said act.

Rule 5. Insurance association and companies to notify industrial accident board of employers who insure or cease to insure.—That the Insurance association and all liability insurance companies shall notify the industrial accident board of the names and addresses of all employers who insure their liability under the workmen's compensation act, notice to be given forthwith upon the issuance of such insurance and a further notice to be given when employers cease to be so insured.

Rule 6. Agreements between the insurer and employé.—Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and rule adopted by the Board.)

The above paragraph of this rule shall be written or printed at the head of every agreement regarding compensation, and of every receipt taken by the insurer from the employé.

Rule 7. Employer to file notice of insurance with the board.—Every employer shall file with the Industrial Accident Board a copy of the form of notice, including the signature thereto, which he has given to his employés that he has insured under this act.

Rule 8. Employer to notify employés of change of insurer.—Every employer shall notify his employés of

any change of insurer by serving or posting a new "notice to employés," stating the name of the new insurance company or association insuring his liability under this act, and filing a copy of such notice with the Industrial Accident Board.

§ 309. Formal procedure—List of forms.—The Industrial Accident Board of Massachusetts, responding to the duties imposed upon it by the law has prescribed fifteen forms which are required to be used by employers, injured employés, insurance associations and liability insurance companies covered by the act, together with certain instructions which are designated as follows:

(a) Notice to employés (by employer);

(b) Notice of claim of common-law rights (by employé);

(c) Notice of waiver of rights under common law previously claimed (by employé);

(d) Agreement for redeeming liability by payment of lump sum (by employé and insurer):

(e) Notice that an employer has ceased to be a subscriber (by employer);

(f) Notice to industrial accident board that an injured employé has refused to submit himself to an examination (by insurance association of company);

(g) Notice to employé from industrial accident board relative to his refusal to submit himself to an examination (by Industrial Accident Board);

(h) Agreement in regard to compensation (by employé and insurer);

(i) Claims for compensation for injury (by employé);

(j) Notice of injury (by employé);

(k) Report of committee on arbitration;

(l) Application for review of claims before full board (by aggrieved party);

(m) Notice assessing cost of proceedings before arbitration committee upon party prosecuting or defending same without reasonable grounds (by employé and insurer);

(n) Receipt on account of compensation (by employé);

(o) Settlement receipt (by employé).

These forms are given in full in the succeeding pages in the foregoing order.

§ 310. Form of notice to employés (a):

As required by chapter 751, of the Acts of 1911, Commonwealth of Massachusetts, and amendments thereto, entitled "An Act relative to payment to employés for personal injuries received in the course of their employment, and to the prevention of such injuries."

This will give you notice that I (we) have provided for payment to our injured employés under the above act by insuring with the ----------Insurance Co.

Insert address of company here.

Date ---------- ----------

Name of employer.

Address ---------- ----------

City or town. Street and number.

§ 311. Form of notice of claim of common-law rights. (b)

----------191--

To ----------

Name of employer.

This is to notify you that I claim my right of action at common law to recover damages for personal injuries. This notice is given to you under the Acts of 1911, chapter 751, section 5, Part I, and amendments thereto.

Signature of employé.

Address----------

City or town, Street and No.

§ 312. Form of notice of waiver of rights under common law previously claimed. (c)

----------191--

To ----------Employer.

This is to notify you that I waive my rights under the common law previously claimed by former notice, and now claim my rights

under the workmen's compensation act. This notice is given to you under the Acts of 1911, chapter 751, section 5, Part I, and amendments thereto.

Signature of employé.

§ 313. Form of agreement for redeeming liability by payment of lump sum. (d)[2]

Received of_____

Name of insurer.

the lump sum of_____dollars and _____ cents, making in all, with weekly payments already received by me, the total sum of_____ dollars and _____ cents, a weekly payment having been continued for not less than six months. Said payments are received in redemption of the liability for all weekly payments now or in the future due me under the Massachusetts Workmen's Compensation Act, for all injuries received by me on or about the_____day of_____, 191____, while in the employ of_____, subject to

Name of employer and address.

the approval of the Industrial Accident Board.

Witness my hand this_____day of_____, 191___

Witness _____	_____
Name.	Name of employé.
Address _____	_____
City or town.	City or town.
_____	_____
Street and number.	Street and number.

§ 314. Form of notice that an employer has ceased to be a subscriber. (e)

Section 21, Part IV, chapter 751, Acts of 1911, as amended by section 16, chapter 571, Acts of 1912, provides that when an employer ceases to be a subscriber, he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract of hire with him, and he shall file a copy of said notice with the Industrial Accident Board. In case of the renewal of the policy, no notice is required. Following is the form:

Notice.

This is to give you notice that I (we) have ceased to be a subscriber in any insurance company, under chapter 751, Acts of 1911,

---

[2] Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the Industrial Accident Board. (Section 22, Part II, chapter 751, Acts of 1911, and amendments thereto.)

and amendments thereto, and that the policy formerly held by me expired _____ or is to expire_____

_____

Name of employer.

_____Address, _____

City or town, street and No.

§ 315. Form of notice to industrial accident board that an injured employé has refused to submit himself to an examination. (f)

You are hereby notified that_____

Name of employé.

_____

Street and No. City or town.

who was injured on or about_____while in the employ of_____

Date

_____ at _____

Name of employer. Place.

has refused to submit himself to an examination, as required under the provisions of section 19, Part II, chapter 751 of the Acts of 1911, and amendments thereto.

_____

Name of insurance association or company.

Per_____

_____191

City.

§ 316. Form of notice to employé from industrial accident board relative to his refusal to submit himself to an examination. (g)

To _____

_____

Street and No. City or town.

The _____

Name of insurance company.

has notified the Industrial Accident Board, under date of_____ 191___, that you have refused to submit yourself for examination, as required by section 19, Part II, chapter 751, Acts of 1911, and amendments thereto. Your attention is called to the terms of the act which provides—

"After employé has received an injury, and from time to time thereafter ___he shall_____ submit himself to an examination by a physician or surgeon____furnished and paid for by the association or subscriber. The employé shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way ob-

structs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited."

INDUSTRIAL ACCIDENT BOARD,

By----------

§ 317. Form of agreement in regard to compensation. (h)[3]

----------, Employé

----------, Insurer.

We, ----------, residing at------

Name of injured employé.

city or town of----------and the

Name and address of insurance association or company.

have reached an agreement in regard to compensation for the injury sustained by said employé while in the employ of----------

---

Here insert name and address of employer.

Here insert the time, including hour and date of accident, the place where it occurred, the nature and cause of injury, and other cause or ground of claim.

The terms of the agreement follow:

(Here state the sum per week agreed upon subject to the terms of the Act.)

---------- ----------

Witness. Name of injured employé

Name of insurance association or company.

§ 318. Form of claim for compensation for injury. (i)[4]

This is to notify you----------

(Name of association or company with which employer is insured.)

that I claim compensation from you under the workmen's compen-

---

[3] Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and Rule No. 6 adopted by the Board.)

[4] This claim is to be filed with the Industrial Accident Board and may be sent by mail; at the time of filing, a copy thereof should also be sent by the employé to the insurance association or company. The claim should be made within six months after the occurrence of the injury. (Chapter 751, Part II, section 15, and section 23, as amended by Acts of 1912, chapter 571, section 5.)

sation act, chapter 751, Acts of 1911, and amendments thereto, for personal injury sustained while in the employ of_____
_____, of _____
Name of employer Street and number.
_____The time of my injury was_____
City or town.
_____
Here state date and time of day as near as possible.
The place of injury was_____
_____
State name or description of building, or place, where injury was sustained.
The cause[5] of my injury was_____
Describe cause of injury.
The nature of my injury is as follows:_____
_____
Describe injury with such exactness as possible.

_____
Signature of injured employé.

_____
Street and number.

_____
City or town.

_____
Date of making this claim.

Name of association or company with which employer is insured.

§ 319. Form of notice of injury. (j)[6]

This is to notify you_____
Name of employer, or insurance association or company.
that on the_____day of_____, 191___, at about____o'clock,

[5] If it is claimed that the injury was caused by the serious and willful misconduct of the employer, or of any person regularly entrusted or exercising the powers of superintendent, it is requested that it be stated in this claim for compensation, setting forth in the alleged cause, in general terms, in what the serious and willful misconduct of the employer or superintendent consisted.

Section 14 of Part III of this act provides that if any proceedings are brought, prosecuted or defended under this act without reasonable ground, the whole cost of the proceedings shall be assessed upon the party who has so brought, prosecuted or defended them.

[6] Under sections 15, 16 and 17, Part II, chapter 751, Acts of 1911, and amendments thereto, notice of the time, place and cause of the injury must be given to the employer or the association or the liability insurance company, as soon as practicable after the happening thereof. The following is a form of the notice to be given under the above sections.

a. m. or p. m._____, I received personal injury while in your employ in the city (town) of_____in the_____
Name or description of building or place of employment.
and that the accident was caused to me by reason of_____
Describe cause of injury.

_____
Name of employé.

_____
City or town.

Address_____
Street and number.

§ 320. Form of report of committee on arbitration. (k)

_____, Employé.
_____, Insurer.

The arbitration committee appointed under the provisions of section 7, Part III, chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of_____
v. _____
being case No. _____on the files of the Industrial Accident Board, report as follows—

(Here will follow report.)

§ 321. Form of application for review of claim before full board. (l)[7]

To the Industrial Accident Board, Boston, Mass.

The undersigned, as provided in Part III, section 7, chapter 751 of the Acts of 1911, and amendments thereto, makes application for a review of the findings of the Committee on Arbitration in the claim of_____
_____ v. _____
This claim for a review is based on the following grounds—

_____
_____
_____191__

§ 322. Form of notice assessing cost of proceedings before arbitration committee upon party prosecuting or defending same without reasonable grounds. (m)

_____, Employé.
_____, Insurer.

To _____
You are hereby notified that the proceedings before the_____
_____

[7] "No party shall as a matter or right be entitled to a second hearing on any matter of fact."

Industrial Accident Board, or Arbitration Committee, as case may be. on the above-entitled claim, have been determined by said Committee, or Board, to have been_____by you without reasonable
Prosecuted or defended.
grounds, and that the costs, amounting to $_____, are assessed against you.

Respectfully,
INDUSTRIAL ACCIDENT BOARD,
or ARBITRATION COMMITTEE.
By_____

§ 323. Form of receipt on account of compensation. (n)

Received of_____
Name of insurance association or company.
the sum of_____dollars, and_____cents, being the proportion of my weekly wages for the period from the_____day of_____, 191___, to the_____ day of_____, 191___, under the Massachusetts Workmen's Compensation Act, subject to review by the Industrial Accident Board.[8]
$_____

Witness	Employé.
Street and number.	Street and number
City or town.	City or town.

§ 324. Form of settlement receipt. (o)[9]

Received of_____
Name of insured.
the sum of_____dollars and_____cents, making in all, with weekly payments already received by me, the total sum of_____dollars and_____cents, in settlement of compensation under the Massachusetts Workmen's Compensation Act, for all injuries re-

[8] Every agreement in regard to compensation is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and rule adopted by the Board.

[9] Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memo-

ceived by me on or about the_____day of_____, 191___,
while in the employ of_____

Name of employer, city or town, street and number.

subject to approval and review by the Industrial Accident Board.

Witness my hand this_____day of_____, 191___

Witness	
Name.	Name of employé.
Address	
Street and number.	Street and number.
City or town.	City or town.

randum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and Rule No. 6 adopted by the board.)

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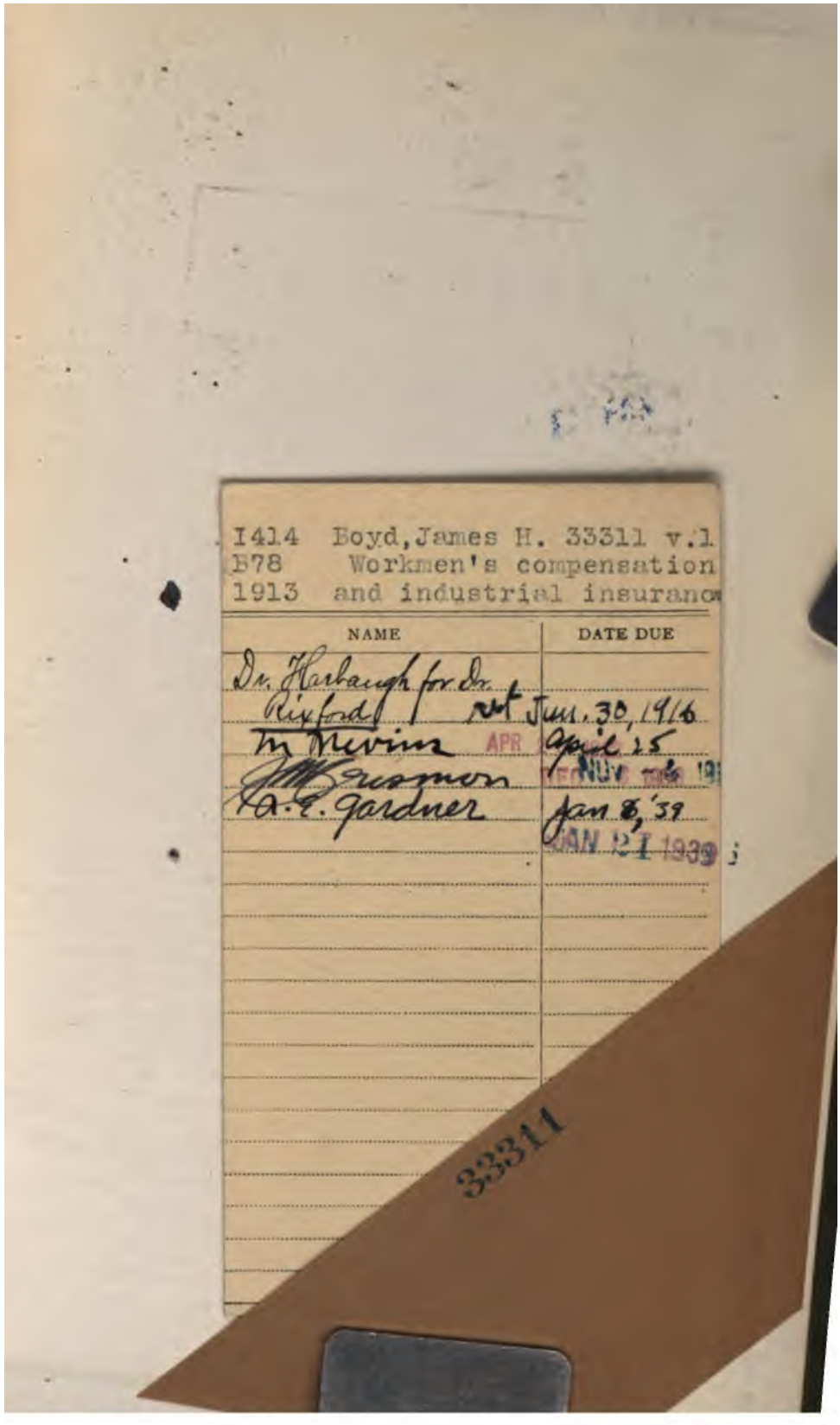

I414 Boyd, James H. 33311 v.1
B78 Workmen's compensation
1913 and industrial insurance

NAME	DATE DUE
Dr. Harbaugh for Dr. Rixford	Jun. 30, 1916
M Nevins	April 25
J M Crosmon	NOV 1 1916
A. E. Gardner	Jan 8, '39
	JAN 21 1939

33311